



**BUREAUCRATIC AUTONOMY IN PRACTICE: A COMPARATIVE  
CASE STUDY OF REVENUE ADMINISTRATIONS IN  
JAMAICA AND THE DOMINICAN REPUBLIC**

by

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**ABSTRACT**

*Over the past three decades, 'agencification' and autonomous organisation seem to have emerged as the new orthodoxy in the reform of public administration. Such development has fuelled a lively academic debate on bureaucratic autonomy and political control – whether these two phenomena are diametrically opposed, or whether the possibility exists for their co-existence within the public administrative space. This cross-jurisdictional, interdisciplinary piece of research seeks to advance current understanding of bureaucratic autonomy on two fronts. First, the study explores the under-researched issue of factors which may serve to condition the exercise of bureaucratic discretion. Second, it is distinct from current works because of its comparative analysis of the scope for bureaucratic manoeuvrability within differing legal traditions and differing systems of government. Drawing on resource dependency and institutional theories, the research uses as its empirical basis two case studies of revenue administrations in Jamaica and the Dominican Republic. Notwithstanding the historical and cultural differences, research findings show a number of common functional realities. The more influential macro-institutional constraints fed through to impact on internal operational functioning in areas such as the establishment of tax priorities and revenue targets. No support was found for the hypothesis that different legal traditions have a differential impact on bureaucratic functioning. In both jurisdictions, a detailed 'fussy' style of drafting revenue laws aims towards certainty and predictability, with no particular bias towards taxpayers or the bureaucracy. Legal drafting style may be a function of the specific policy area.*

Keywords:      Bureaucratic Autonomy      Caribbean      Tax and Customs Administration  
                         Comparative Government      Comparative Legal Tradition

## **DEDICATION**

To GOD be the glory.

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One of the joys of having completed what arguably is the most substantial piece of research which I have undertaken to date is to stand back and reflect on the entire process. As the original research question changes, the theoretical framework shifts, and access to the cases, data and people become difficult, someone once described the emotions experienced by most PhD students as a mixture of confrontation and excitement, pleasure and despair, confidence and uncertainty. All these emotions (probably more) typified my doctoral experience, and it would therefore be remiss of me not to acknowledge those persons who supported me along this long but fulfilling journey.

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## ABBREVIATIONS AND ACRONYMS

ACV	Agreement on Customs Valuation
AG	Attorney General's Chambers
AGD	Auditor General Department
CdeC	Cámara de Cuentas [Accounts Chamber or Audit Commission]
CBP	Customs and Border Protection
CD	Customs Department
CG	Contraloría General de la República Dominicana [Office of the Comptroller General of the Republic]
CPC	Chief Parliamentary Counsel
CPO	Chief Personnel Officer
CSI	Container Security Initiative
DFS	Deputy Financial Secretary
DG	Director General
DGTA	Director General of Tax Administration
DGO	Director General's Office
DGA	Dirección General de Aduanas [Customs Department]
DGII	Dirección General de Impuestos Internos [Internal Revenue Department]
DIGECOG	Dirección General de Contabilidad Gubernamental [General Directorate of Government Accounting Department]
CAFTA-DR	United States – Central America Free Trade Agreement – Dominican Republic
ERD	Efficiency and Reform Directorate
FAA	Financial Administration and Audit Act
FAAA	Financial Administration and Audit (Amendment) Act, 1992
FIA	Financial Institutions Act
FID	Financial Investigation Division
FMIS	Financial Management Information System
FS	Financial Secretary
FSL	Fiscal Services Ltd.
FY	Financial Year
GCTA	General Consumption Tax Act
GCTD	General Consumption Tax Department
GoJ	Government of Jamaica
GDR	Gobierno de la República Dominicana [Government of the Dominican Republic]
HR	Human Resource

HRC	Human Resource Committee
HREC	Human Resource Executive Committee
IBRD	International Bank for Reconstruction and Development (World Bank)
IDB	Inter-American Development Bank
IMF	International Monetary Fund
IRD	Inland Revenue Department
ITA	Income Tax Act
JCSA	Jamaica Civil Service Association
KIs	Key Informants
MoF	Ministry of Finance & Planning
MoU	Memorandum of Understanding
ONAP	Oficina Nacional de Administración y Personal [National Administration Personnel Office]
ONAPLAN	Oficina Nacional de Planificación [National Planning Office]
ONAPRES	Oficina Nacional de Presupuesto [National Budget Office]
OPC	Office of the Parliamentary Counsel
OSC	Office of the Services Commission
PAFI	Programa de Administración Financiera Integrada [Integrated Financial Management Program]
PCU	Project Coordination Unit
PLD	Partido de la Liberación Dominicana [Dominican Liberation Party]
PRD	Partido Revolucionario Dominicano [Dominican Revolutionary Party]
PSED	Public Service Establishment Division
PSMP	Public Sector Modernisation Project
RAA	Revenue Administration Act
RAAA	Revenue Administration (Amendment) Act
RB	Revenue Board
RBA	Revenue Board Act
RCA	Revenue Court Act
RPD	Revenue Protection Division/Department
SAR	Staff Appraisal Report
SEF	Secretaría de Estado de Finanzas [Ministry of Finance]
SBA	Stand-by Arrangement
SCJ	Suprema Corte de Justicia [Supreme Court of Justice]
SEF	Secretaría de Estado de Finanzas [Ministry of Finance]
SEH	Secretaría de Estado de Hacienda [Ministry of Finance]
SIGEF	Sistema. Integrado de Gestion Financiera [Integrated Financial Management System]

SPDS	Secretaría de Estado de Planificación y Desarrollo Sostenible [Ministry of Planning and Sustainable Development]
STP	Secretaría Técnica de la Presidencia [Technical Secretariat of the Presidency]
TA	Tax Administration
TAD	Taxpayer Appeals Department
TASD	Tax Administration Services Department
TaxARP	Tax Administration Reform Project
TA 1-18	Tax Administration Grades 1-18
TCA	Tax Collection Act
TLC	Tratado de Libre Comercio [Commercial Free Trade]
TN	Tesorería Nacional de la República Dominicana [National Treasury]
TPU	Tax Policy Unit
UAI	Unidades de Auditoria Interna [Internal Audit Units]
WB	World Bank
WCO	World Customs Organisation
WTO	World Trade Organisation

# **CHAPTER 1**

## **INTRODUCTION**

### **1.1 BACKGROUND**

The changing role of the State in achieving sustainable economic development and broader developmental objectives remained a central concern during the mid-1960s to mid-1990s. A shift in thinking away from the 1930s Keynesian model of the welfare interventionist state towards neo-liberal policies advocating a minimalist state stemmed from a number of transnational and national challenges. Today, faced with pressures and demands from citizens, civil society organisations, local businesses, investors and international organisations (Flynn, 2009), governments are still wrestling with the issue of the most appropriate role of the State in an increasingly marketised economy and pluralised society. Now, the talk is of an alternate strategy that factors the state back into development, the focus being the “effective state” (World Bank, 1997:1) - not so much ‘less government’ but ‘better government’ (Schiavo-Campo and Sundaram, 2001:66).

Such developments have resulted in public administration, the machinery through which government conducts its business, receiving unprecedented and increasing attention. Public sector modernisation, through the implementation of public sector reform programmes, has been a common worldwide experience, including in Latin American and the Caribbean (Sutton, 2008). Many Latin American countries embarked on first generation reforms that centred on structural adjustment in the 1980s. The trend toward democratisation across the region in the early 1990s led to

second generation reforms; followed by anti-corruption, decentralisation and regulatory reforms being implemented in the late 1990s (World Bank, 2004). Likewise in the Commonwealth Caribbean, in the 1980s, several countries in the region underwent structural adjustment programmes that shaped and provided impetus for subsequent public sector reform programmes (Bissessar, 1998; Sutton, 2008).

In terms of rationale, reforms sought to address a number of the assumed defects in the traditional Weberian model of public administration characterised as costly, wasteful, inefficient, sclerotic, overly-formalised, and unresponsive to service users (Talbot and Caulfield, 2002; Batley and Larbi, 2004; Thynne and Wettenhall, 2004). Hence the move away from the traditional model of “administration” towards the more flexible and customer-oriented “management” of public service planning and delivery (Keen and Murphy, 1996; Panozzo, 2000). The new emphasis on “public management” produces reforms that ostensibly aim for improved efficiency and better quality service delivery; but may also represent power struggles within government; be part of a wider socio-political reform such as liberalisation; or be a symbolic response to a significant failure of government in the face of events such as natural disasters (Flynn, 2009). Whatever the motive(s), it is important to understand the underlying rationale behind reform and the type of reform most likely to emerge.

Regarding the nature of reforms, dominating the reform agenda of all countries is a universal phenomenon referred to as the New Public Management<sup>1</sup> (NPM) (Hood,

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<sup>1</sup> Note that NPM is posited here as only one philosophical approach to public sector reform. Many developing countries are known to be undertaking reforms completely at variance with NPM precepts, for example, in areas such as capacity building and controlling corruption (Polidano and Hulme, 1999; Batley and Larbi, 2004)

1991; McCourt and Minogue, 2001; Sarker, 2005). For O'Flynn (2007), NPM represented a post-bureaucratic paradigm of public management, incorporating a suite of reforms intended to enact a break from the traditional model of public administration underpinned by Weber's (1946) bureaucracy, Wilson's (1987) policy-administration divide, and Taylor's (1911) scientific management model of work organisation. The model embodies a set of assumptions and value statements about how public sector organisations should be designed, organised, and managed and how, in a quasi-business manner, they should function (Diefenbach, 2009).

Components of NPM may be incorporated into two broad, but not mutually exclusive strands – one emphasising managerialism and organisation; the second derived from the 'new institutional economics' and focusing on markets and competition as a way of giving 'voice' and 'choice' to users and promoting efficiency in service delivery (Batley and Larbi, 2004). A key sub-component of managerialism is management decentralisation. Whilst several related elements of management decentralisation can be distilled from the NPM literature, one key trend involves the structural disaggregation or "unbundling" of the bureaucracy (Talbot et al, 2000; Pollitt et al, 2001; Pollitt and Bouckaert, 2000), whereby the ministerial-type large monolithic organisation is broken up into a small strategic policy core and larger operational units, the latter located on a continuum at "arms-length" (Talbot et al, 2000:2) of the ministerial structure.

Structural disaggregation has resulted in a number of institutional variants. Hailed as the hallmark of the NPM reform, however, is the executive agency model (Yesilkagit, 2004); the United Kingdom, Australia and New Zealand providing important examples. Some authors writing on 'agencification' refer to an outbreak of an

internationally infectious “agency flu” (Pollitt et al, 2001:272). Linked to the practice of agencification is the concept of ‘autonomisation’ (Kickert and Verhaak, 1995:532; Pollitt et al, 2001:275), the idea of “letting managers manage”, free and unencumbered from political and bureaucratic constraints. ‘Bureaucratic autonomy’, described as the formal exemption of an agency head from full political supervision by the departmental minister (Christensen, 1999:1), is a process whereby managerial responsibility is transferred from bureaucratic hierarchy to managers that can be held accountable for the responsibilities attributed (de Kruijf, 2010). Even though the higher offices predominate, all elements of the organisation are expected to share in the exercise of this discretion. The literature makes distinctions between different dichotomies of autonomy, including formal vs. informal (Thynne, 2004; Kidd and Crandall, 2006); formal vs. factual (Moe, 1995; Batley and Larbi, 2004; Yesilkagit, 2004); ascribed vs. earned (Joshee and Ayee, 2009); as well as static vs. dynamic (Talbot et al, 2000; Bouckaert and Peters, 2004; Taliercio, 2004; Young and Taveres, 2004; Christensen and Lægreid, 2004)

Regarding the benefits of agencification and autonomisation, Pollitt et al (2001) note a theoretical convergence towards the hypothesis that more specialised, more autonomous public bodies will improve technical as well as allocative efficiency, permit a distancing of agencies from political intervention, and allow for higher quality service delivery through an escape from the “iron cage” of central civil service rules and regulations (DiMaggio and Powell, 1983:147). Other benefits include greater transparency, through the agency’s subjection to contract-like regimes; as well as an ability to bring services closer to the customer as a result of



stakeholder identification and their participation in the agency's decision making processes.

A corollary to the concept of bureaucratic autonomy is the notion of control of the bureaucracy. Political control of the bureaucracy is one of the most central concerns in the academic literature. For Scott (2003), bureaucratic control is embedded in the social and organisational structure of the firm and is built into features such as the definition of responsibilities, job categories, work rules, promotion procedures, and wage scales. One debate centres around the argument that political control and bureaucratic autonomy are dichotomous opposites: if there is political control, there cannot be bureaucratic autonomy, and vice versa (Doo-Rae, 2008). In order for autonomy to co-exist alongside bureaucratic control, autonomy must be anchored within an appropriate policy and performance framework (Batley and Larbi, 2004). For there to be co-existence, interactions at the politico-administrative interface should not only focus on the creation of conditions whereby bureaucracies are forced to respond to the will of elected officials and central authorities; the opportunity must also exist for bureaucrats to make strategic choices and to reflect their own preferences in the implementation of policies.

## **1.2 THE PROBLEM AND ITS CONTEXT**

Whatever the limitations of the state, government is still directly responsible and accountable for a number of key functions. One such responsibility, public resource mobilisation, remains vital to state building (North-South Institute, 2010). Most developing countries still depend on external financing to fund their development activities. Within the current global economic context, where austerity is required

and access to foreign resources from aid donors has become increasingly difficult, the sustainable development of developing countries now hinges on a shift from external grant and loan financing, towards a greater reliance on domestic resource mobilisation. Reliance on internal resources not only reduces the volatility associated with external funding, it ties accountability to citizens rather than to external investors and aid donors (Hlope and Friedman, 2002; Moore, 2004; Moore and Unsworth, 2006; North-South Institute, 2010).

Continual need for greater revenues – largely a question of direct and indirect taxation - has thus become a priority in governments' reform agenda. Critical to successful resource mobilisation is the formulation of sound tax policies coupled with the existence of good tax institutions to implement such policies. Gill (2003) argues that while tax policy and tax laws create the potential for raising tax revenues, the actual amount of taxes collected depends, to a large extent, on the efficiency and effectiveness of revenue administration. For Bird (1998:184), '...tax administration *is* tax policy', hence the need to place the administrative dimension at the centre, rather than at the periphery of tax reform efforts.

Many developing countries have pursued reforms in the area of tax policy, efforts which in themselves were frequently insufficient to increase revenues. Over the last two decades, many countries have also embarked on administrative reforms of their revenue administrations (tax and customs). In terms of the shape of such reforms, revenue administration has not been immune to the new governance arrangements advocated by the NPM, and is now very much at the forefront of the growing trend towards decentralisation and autonomisation. Institutional design has resulted in the use of the (semi) autonomous revenue authority (SARA) as the delivery model for

improved administration - a current practice which mirrors the broader development of the use of the executive agency model in public service administration.

Under the SARA governance model, autonomy may be increased in one of two ways. In one instance, increase in authority is provided within existing structural arrangements; whilst in the second case, revenue departments are brought together under one umbrella institution that is placed at 'arms-length' from the finance ministry and the central machinery of government. There are presently close to forty SARAs around the world, clustered largely in Africa and Latin America (Crandall, 2010). Within the Caribbean, the importance of the administration dimension of tax reforms has also resulted in the use of SARAs in Jamaica and Guyana.

Practical reasons advanced for the establishment of SARAs include: increased effectiveness of tax administration and the ability to mobilise a larger share of fiscal revenues; the opportunity to escape the constraints of civil service rules; the reduced likelihood of political/ministerial interference; reduced levels of corruption; and improved service delivery. Taliercio (2004) asserts that SARAs enable politicians to overcome problems of credible commitment – the ability to reassure taxpayers that tax collection is undertaken without political bias or corruption.

Despite the rhetoric and ongoing calls in the literature for increased bureaucratic discretion, autonomy enhancing elements are easier to legislate than to realise in practice (Batley and Larbi, 2004). The matter, one can safely argue, hinges around that of implementation - an issue that has generated a great deal of discussion in the academic literature. Pressman and Wildavsky (1973: 132) argued the need for more people to begin with the understanding that implementation, under the best of

circumstances, is exceedingly difficult; oft time going down 'a tortuous and frustrating path'. Appreciation for the number of steps involved in the process, the number of participants whose preferences have to be taken into consideration, the number of clearances involved at the various decision points throughout the history of a programme, all combined with the geometric growth of interdependencies over time, provides an idea of the task involved in implementation.

Similarly the argument of Dunsire (1980:9) about the popularly held view that putting policies in place is something technical, yet simple - a domestic chore that 'people below the stairs' can be left to. The author posits that it is only when things go wrong that attention is drawn to the below the stairs activity, to questions of implementation, which over the years have proven to be the very rocks on which programmes have eventually floundered.

Crandall (2010:3) aptly summarises the challenge faced by tax bureaucracies:

'...the revenue administration requires sufficient autonomy to exercise its powers and responsibilities set out in the revenue laws. It should be noted that these powers are amongst the most pervasive that any law or statute provides. As a result, there are usually limits to autonomy and to the extent that the administration of these laws can be distanced from government.'

Examination of some of the empirical findings on the formal freedoms granted to revenue administrations and the actual practice of bureaucratic discretion have yielded mixed results. The fair degree of sustainable autonomy found within at least three of the six SARAs investigated across Latin America and sub-Saharan Africa led Taliercio (2004) to conclude that not only does autonomy matter, but that more autonomy leads to improved performance. Relative to the other cases in the study,

the Kenya Revenue Authority and Peru's National Tax Administration Superintendency (SUNAT) used their autonomy to make significant advances in the area of personnel management; the latter's personnel system highly resistant to political interference. Factual financial autonomy resulted in SUNAT's complete control over the formulation of its budget, with decisions externally reviewed only for the purpose of ensuring the consistency of the budget with government's overall macroeconomic goals.

On the contrary, in their survey of 29 SARAs, Kidd and Crandall (2006) note that none of the respondents appeared to have been very far removed from government. Likewise the findings of Fjeldstad and Moore (2008) who note that even though the creation of revenue agencies facilitated a series of 'nuts and bolts' reforms in the ways in which taxes were assessed and collected, despite the rhetoric and debate about autonomy, there was very little loosening of the political and bureaucratic grip of central executive authorities over the revenue collectors. Presidents and Ministers of Finance were still very much in control. One major challenge for tax bureaucrats they argued, is in the application of the concept of autonomy to an organisation that handles large sums of money – invariably resulting in problems involving political control.

Such findings highlight the need for further research on the issues surrounding this topic. Going beyond an assessment of the nature and extent of formal and factual autonomy, what remains to be done is empirical work that focuses on factors likely to impact on the actual practice of autonomy, either through their enlarging or reducing the field of what is possible and what is practicable. Greater understanding of what works, what does not, and more importantly why, can inform

future reform efforts, both at the institutional design and the policy implementation stages.

### **1.3 THE NATURE OF THE RESEARCH**

The study first seeks to understand the reason(s) behind reforms, the choice of institutional form, as well as the process of reform. At issue is the question of whether the espoused doctrine prescribing the granting and actual practice of bureaucratic autonomy has an empirical foundation, or whether organisations still find themselves trapped within the 'iron cage' or clutches of system-wide regulations. The research also explores the nature and characteristics of factors which impact on the capacity of the bureaucracy to exercise administrative discretion.

At the heart of the study's framework lies an institutional approach that draws on resource dependency theory. Pollitt et al (2001) argue that the two theoretically crucial variables of bureaucratic autonomy and political control seem to depend on a multitude of contextual factors. The institutional context, as a significant determinant of what is possible (Flynn, 2009), is crucial in determining reform outcomes (Batley and Larbi, 2004). Whilst the institutional approach will capture the fluidity and dynamism embodied in socio-political relations, the \*combined theoretical perspective allows for a more complete explanation of the issues surrounding the phenomenon under study.

The study's institutional framework will be applied to investigate causal factors within the organisation's broader institutional environment. Factors are identified at the

intra-organisational, immediate task network<sup>2</sup> and broader macro-institutional levels. Whilst the more micro intra-organisational factors will show how the internal workings of the bureaucracy is structured by external activities, the focus on environmental factors beyond the organisation's boundaries at the meso and macro levels will provide knowledge on interactions between the bureaucracy and political institutions. At the macro level, two factors currently under-researched in the autonomy literature – legal tradition and system of government – are also investigated.

Given the preceding background information, explanations and arguments, the research aim, its objectives and the research questions can now be specified with greater clarity.

#### **1.4 RESEARCH QUESTIONS**

The broad aim of the study is to examine the process and outcomes of autonomisation focusing, from an institutional perspective, on constraints and opportunities for action.

The specific research objectives, research questions and hypotheses are outlined as follows:

*Obj.1:* To explain the purpose behind fiscal administrative reforms, analysing the political and institutional factors that led to the selected choice of institutional form.

**RQ<sub>1</sub>: What was the rationale behind reform? Why did reform take on the particular shape and character which it did?**

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<sup>2</sup> The organisation's task network comprises the various entities, organisations and institutions with which the organisation is required to interface for goal accomplishment.

Obj.2: To examine the nature and extent of bureaucratic autonomy exercised in practice by semi-autonomous revenue agencies:

**RQ<sub>2</sub>: How autonomous are semi-autonomous revenue agencies in practice? Do revenue agencies make use of informal strategies to escape bureaucratic controls?**

*H<sub>1</sub>: Semi-autonomous revenue agencies are likely to exercise a limited amount of autonomy. However, agencies may add to their flexibilities by making use of informal strategies.*

Obj.3: To examine the nature of factors influencing the actual practice of bureaucratic autonomy:

**RQ<sub>3</sub>: What are the factors that condition levels of Bureaucratic Autonomy?**

*H<sub>2</sub>: Factors within the revenue agency's broader institutional environment are more likely to condition levels of autonomy than factors within its internal or task network environments.*

## **1.5 THE RESEARCH CONTEXT**

The research, a comparative case study centering around fiscal administrative reforms, focuses on the two Caribbean islands of Jamaica and the Dominican Republic (DR). In each of the two cases the institutions under investigation are the Customs Department and the Internal Revenue Department. Reforms of these institutions took place in 1999 in Jamaica and 2006 in the DR.

It is expedient to explain this choice of setting; in particular why the DR was chosen as Jamaica's opposite in the ensuing comparison. One might argue that a parallel between Jamaica and one of its English-speaking counterparts might provide for a



more balanced equation. Case selection was in response to a number of factors. As a comparative study, there was a need to ensure that the investigation focused on cases which: (a) were comparable and (b) allowed for the research questions to be appropriately addressed.

Regarding comparability, the two cases exhibit a number of similarities. Both Jamaica and the DR share common economic experiences in terms of their costly debt service. Both countries face the complex of constraints upon small resource-poor insular states, challenged to develop frameworks to redress social and economic inequities (Hillman and D'Agostino, 1992). In both countries ongoing reforms in tax administration, as part of a wider initiative to improve efficiency in areas considered core functions of government, have resulted in some degree of decentralisation of decision-making power to top civil servants within revenue departments.

Notwithstanding these similarities, there are differences between the two countries. Despite their location within the same broad geographic area, Jamaica (which remains part of the Anglophone Caribbean) and the DR (a part of the Hispanic-Caribbean) have cultural and linguistic differences that stem from their history of colonisation by different colonial powers. Both countries, despite being enveloped in dependency relations vis-à-vis the outside world, have varied ties with the different world powers.

Previously mentioned was the study's interest in examining the potential influence of the system of government as well as the legal tradition on bureaucratic functioning. In order to check such influence, case selection needed to allow for variance on

these two independent variables. Whereas Jamaica follows the Westminster parliamentary model of government and its legal system is based on the common law tradition; the DR is governed by a presidentialist system and operates under the civil law tradition.

Having explained the rationale behind case selection, Table 1.1 uses relevant criteria to summarise case similarities and differences.

The two sections following provide background information, as well as a brief overview of the two cases and the four focal organisations under study. A number of the issues discussed here are pertinent to the ensuing later analysis and are therefore being introduced to set the tone for the arguments that will later follow.

Srl. No.	Item Descriptor	Similarities	Differences	
			Jamaica	Dominican Republic
1.	Geographic Location	Same geographic locale - the Caribbean Region	Part of the Anglophone Caribbean	Part of the Hispanic/Latin Caribbean
2.	Historical/Cultural Background		Historical, cultural and linguistic differences	
			English colonisation, English speaking	Primarily under Spanish rule pre-independence, Spanish speaking
3.	System of Government		Westminster Parliamentary system	Presidential system
4.	Legal Tradition		Common law tradition	Civil law tradition
5.	Economic Background	Both small, weak, open economies; characterised by poor macroeconomic conditions and high debt burden		
6.	External Linkages with world superpowers	Both countries enveloped in dependency relations vis-à-vis the outside world	Varied ties with the differing world powers	
7.	Strategies for macro-economic management	Both countries have implemented broad programmes of public sector reform, (including sectoral fiscal administrative reforms) that incorporate some degree of decentralisation of management decision-making		

Table 1.1: Case Selection – Major Similarities and Differences

## **1.5.1 JAMAICA AND THE REVENUE ADMINISTRATIONS**

### **1.5.1.1 History and Demographics**

Situated south of Cuba and west of Haiti, covering an area of approximately 11,000 sq. miles, Jamaica is the largest English-speaking island in the Caribbean Greater Antilles, with an estimated population of 2.8 million. Attached at Appendix 1 is a map of Jamaica. Over four and a half centuries of colonial experience (1494-1944), Jamaica evolved from a neglected Spanish holding to a plantocracy under the British Empire, later to a Crown colony. Under British guidance, a period of tutelary democracy or limited self-government ensued between 1944, when universal adult suffrage was granted to the colony, and 1962, when independence was achieved (Hillman and D'Agostino, 1992).

### **1.5.1.2 Socio-Economic Background**

Similar to other Caribbean territories, Jamaica has an open, weak and dependent economy. In the decade following independence, Jamaica enjoyed strong GDP growth, averaging about 5% per annum. From 1973 through to the mid-1980s, however, such growth was followed by a sustained contraction in the economy. Efforts to stem the economic decline resulted in a number of structural adjustment programmes, a progressive adoption of market-oriented reforms, as well as the introduction of a systematic programme of privatisation. In the 1990s, the government accelerated the implementation of its reform agenda - reforms in tax policy and administration were initiated, with a step up in the programme of privatisation.

In 1991, following the signing of a Structural Adjustment Programme with the International Monetary Fund (IMF), Jamaica undertook a programme of financial liberalisation. Lack of accompanying prudential regulations resulted in a full-blown financial crisis in 1996. Government bailouts to the ailing financial sector contributed largely to the country's current massive debt burden, now ranked fourth largest in the world per capita. Gross public debt for the financial year 2009/10 stood at 129.3% of GDP. Jamaica's macro environment continues to be fragile with economic growth facing a number of challenges. For the twenty year period 1988-2008, average real GDP growth was just 1.4%, while over the said period real per capita GDP grew by just 14%<sup>3</sup>, resulting in a lack of investment in economic and social infrastructure (Johnston and Montecino, 2011).

#### **1.5.1.3 External relations**

Focusing on macroeconomic management and deficit financing, the period 1973-1996 witnessed a long history of near continuous agreements with the IMF. Such agreements were accompanied by strict conditionalities including public sector wage freezes and other belt tightening measures. Whilst the period after 1996 saw an end to repeated borrowing and the signing of standby agreements, the Fund is still invited to assist in oversight, evaluations and reporting on fiscal management of the economy.

#### **1.5.1.4 Politico-Administrative Culture**

Jamaica, as a former British dependency, operated under a Crown colony system. Jones (1974) opines that the period of passage in Jamaica from colonisation to

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<sup>3</sup> Compared to Caribbean country averages of near 3% and 54% respectively.

internal self-government to independence has had an impact on the machinery of government, with important consequences for the operation of the administrative system. Regarding historical structural and governance arrangements, the need to maintain full control over several dependencies resulted in rules, regulations and guidelines which not only governed the British establishment, but also covered the wider colonial service. It was the persistence of the colonial centralising ideology and the pursuant interaction processes which gave rise to certain cultural behaviours that carried over to the post-independence era (ibid). Such behaviours included a lack of decision-making at lower levels, fear of innovation, and the accumulation of paper to prove compliance.

Mills (1970) focused in great detail on those inherited post-colonial processes of administration. He notes the reluctance of some ministries and senior civil servants to delegate authority and functions, the failure of central governments to devolve authority, and the tendency to see certain operations as the preserve of the centre and to be handled exclusively from the top. Over-centralisation was also reflected in the attitudes and operations of the Ministries of Finance, which inherited some of the central co-ordinating functions of the Crown Colony Secretariat.

Nearly four decades on, the same arguments are still being made. Characteristics of the system of public administration in the Commonwealth Caribbean, which followed the traditional “Weberian” pattern as modified by British colonial practice, includes: a professionally staffed bureaucracy; centralised controls exercised through hierarchical structures; the dominance of general administrators at the apex of the system; and an emphasis on following rules and procedures that involves

substantial paperwork (Sutton, 2008). Negative aspects of these characteristics embodied within a “Commonwealth Caribbean tradition” (ibid:2) have remained largely in place and continue to shape the context in which reform programmes operate.

#### **1.5.1.5 Structure of Government**

The 1962 Constitution established Jamaica as a parliamentary democracy based on the British Westminster model. Appendix II illustrates the structure of the government of Jamaica. The Head of State is the British monarch, represented by the Governor General. The essential business of government is distributed amongst three independent branches – legislative, judicial, and executive, as elaborated below:

##### **The Legislature**

Jamaica’s bicameral Parliament comprises a 60-member House of Representatives elected every five years on the basis of a first-past-the-post electoral system, and an appointed 21-member Upper House (the Senate). At the local level are parochial councils exercising limited powers of local government.

Since 1962, the results of general elections have led to the institutionalisation of a dominant 2-party system, power alternating between the People’s National Party (PNP) and the Jamaica Labour Party (JLP).

##### **The Judiciary and Legal Tradition**

Jamaica’s legal and judicial systems are based on English common law and practice. As illustrated in Appendix II, courts operate at various levels in the judicial

system. The Constitution (ss. 97 & 103) establishes two separate superior courts - a Supreme Court, and a Court of Appeals that lies at the apex of the Jamaican court hierarchy. Justice is locally administered by other bodies such as the Resident Magistrate's (RM) Courts. RM Courts deal summarily with less serious matters both civil and criminal. Under the 1867 Tax Collection Act, the Collector of Taxes may proceed for recovery of any taxes and for penalties on such taxes in a RM Court.

A specialised Revenue Court was established in 1972 by the Judicature (Revenue Court) Act specifically to handle appeals from administrative bodies. Though established by statute, the Revenue Court is deemed part of the Supreme Court, applying the same practices and procedures. The Court hears and determines cases brought by aggrieved taxpayers appealing against the decisions of revenue Commissioners. It has jurisdiction to hear appeals under a number of Acts such as the Customs Act, the Income Tax Act, and the General Consumption Tax Act.

### **The Executive**

Executive power in Jamaica is vested in the Cabinet, led by the Prime Minister – the leader of the party commanding majority support in the Lower House. The Prime Minister appoints Cabinet Ministers who head Ministries dealing with specific portfolios. Historically, the first-past-the-post system and the recurrence of single-party majorities in the House of Representatives have favoured the concentration of decision-making authority in the executive.

At the senior administrative level, the Financial Secretary is responsible for the administration of the Ministry of Finance and Planning. The Constitution provides for the institution of a Public Service Commission to preside over a career civil service

organised into administrative, professional, technical, executive, clerical and manual categories.

#### **1.5.1.6 The Inland Revenue Department**

The Inland Revenue Department (IRD) is responsible for collecting and accounting for all domestic taxes<sup>4</sup>, excluding stamp duty & transfer tax. Responsibilities are not only limited to the collection of tax revenues, but also include enforcement of taxpayer compliance, the provision of taxpayer services, as well as other duties such as motor vehicle registration. In the financial year (FY) 2007/08, the department's actual staffing complement stood at approximately 1300. Appendix III portrays the high level structure of the IRD. The department comprises 42 Business Units, including 28 Collectorates divided into 4 regional offices (Regions 1 to 4) managed by Assistant Commissioners. A tax E-Portal represents the 29<sup>th</sup> 'Virtual' Collectorate.

The core domestic tax system is the Integrated Computerised System for Tax Administration (ICTAS), with an additional nine systems to support various aspects of tax administration, such as the Taxpayer Registration Number (TRN) system, and the Integrated New Cash Remittance System (INCRS).

Appendix IV(a) shows the relationship between IRD gross collections and central government tax revenues (CGTR) between FYs 2000/01 to 2007/08. The

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<sup>4</sup> Taxes include monies, properties, fines, penalties, levies etc, due to government under the Revenue Acts. Taxes collected are income tax (company and individual); PAYE; general consumption tax (a form of VAT on goods and services); special consumption tax on the manufacture of specific prescribed goods; Asset Tax; Education Tax; and Contractors' Levy.



department collects on average 80% of CGTR. This demonstrates the centrality of domestic tax collection to central government receipts and the department's critical role in the socio-economic development process. Revenue projections and collections for the IRD from 2001 to November 2008 are shown at Appendix IV(b). Between the FYs 2001/02 and 2006/07, shortfalls in tax yield ranged from between - 1.9% to -10.9%.

#### **1.5.1.7 The Customs Department**

The Customs Department (CD) was established in 1985, replacing the old Collector General's Office. This Office was divided to form the Inland Revenue Department and the Customs and Excise Department. As the country's primary border management agency and second largest collector of revenues, the department's primary role is to process passenger goods and cargo so as to ensure national safety and security, to optimise revenue, and to facilitate trade and commerce.

The department collects five types of duties and taxes<sup>5</sup>. Through its agency duties function it enforces over 160 pieces of legislation on behalf of at least twenty other government agencies. International trade transactions make use of a self-assessment system, whereby importers or agents certify as to the truthfulness of declarations and supporting documentation, and are required to pay duties and taxes at the time required. For processing data, the major application is Customs Automated Services (CASE), with a variety of systems developed to support electronic manifest, payment and entry processing, as well as risk management.

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<sup>5</sup> These include import duty, stamp duty, additional stamp duty, general consumption tax, and special consumption tax.

Appendix V shows the organic structure of the Customs Department. The structure is decentralised, consisting of headquarters, regional as well as local offices. There are three Collectorates, each headed by a Collector. Headquarters is sub-divided into the Commissioner's Office; with two broad portfolios (Corporate Service and Operations) each headed by a Deputy Commissioner. At the end of the FY 2006/07, there were 1134 approved staff positions.

Customs collects nearly 30% of annual government revenue (Centre for Strategic Management, 1999). Revenue projections and collections for the department from 2001 to November 2008 are shown at Appendix IV(c). On average, total collections fell slightly short of revenue projections, the variance ranging from 1.3% to -5.0%. In 2005/06, actual revenue yield increased by 16.5% from J\$46b to J\$53.6b in 2006/07, before falling roughly 25% to J\$40.1b in 2007/08.

## **1.5.2 THE DOMINICAN REPUBLIC AND THE DOMINICAN REVENUE AGENCIES**

### **1.5.2.1 History and Demographics**

The Dominican Republic (DR) covers 48,730 sq. km with a total population of approximately 9.1 million inhabitants; and forms the eastern two-thirds of the island of Hispaniola. Attached at Appendix VI is a map of the DR. At various points in its history, the country was under the control of Spain (1492-1795; 1802-1821), France (1795-1802), and Haiti (1822-1844). The original declaration of independence in 1844 and seventeen years of self governance were followed in 1861 by a four-year voluntary return to Spanish rule, after which independence was restored. Economic difficulties, ongoing internal disorders and the threat of European intervention led to

a U.S. occupation and the establishment of a military government from 1916 to 1924. During the 31-year reign of Rafael Trujillo (1930-1961), the DR experienced a degree of authoritarianism and centralised decision making unsurpassed elsewhere in Latin America (Kearney, 1986). Governance of the country has often alternated between liberal and authoritarian rule, with democratically elected government now more the order of the day.

#### **1.5.2.2 Socio-Economic Background**

Operating in an open and competitive environment and heavily dependent on economic developments in industrialised nations (particularly the U.S.), the DR faces a number of economic challenges. Despite such challenges, however, the country had one of the fastest growing economies in the 1990s. After a decade of little or no growth in the 1980s, the economy boomed, expanding at an average rate of 7.7% per year from 1996-2000, per capita income more than doubling between 1991 and 2000. Growth turned negative in 2003 (-0.4%) due to the effects of the 2003 banking crisis and government's handling of major bank frauds. A dramatic turnaround, however, was achieved in 2004. Inflation was cut sharply and real growth rose to 2%. By 2006, the Dominican economy had shown clear signs of recovery from the effects of the 2003 financial crisis. The economy grew by 9.3% in 2005 and 10.7% in 2006, due partly to a favourable international environment and also to economic reforms introduced in 2004. Even though the DR's economy slowed in 2008-2009 as a result of the global recession, it still remains one of the fastest growing in the Caribbean region.

### **1.5.2.3 External relations**

Over the years, Dominican politics have been relatively highly influenced by a variety of transnational actors – international agencies, and the embassies of countries such as the U.S. – that have played a significant role not only in Dominican international affairs, but also in the country's internal affairs. According to Wiarda and Kryzanek (1992:56, own emphasis in italics), the relationship of the United States to the Dominican Republic could best be described as one of “suprasovereignty”, the term being used to convey the idea that “the U.S. not only reacts to internal Dominican events in ways that alter the small nation's politics and development but also makes decisions affecting the Dominican Republic as if *it* (the United States) were sovereign”. In this ‘unequal partnership’ they opined that the DR is viewed not as an independent nation, but as a satellite, with repeatedly attempts made by the U.S. to place its stamp on the course of Dominican history.

### **1.5.2.4 Politico-Administrative Culture**

Kearney (1986:147) refers to the ‘dogged salience’ of the administrative antecedents of the Dominican Republic, and the existence of a politico-administrative heritage which can be traced back to early Spanish colonialism. The enduring legacy of Spain's colonial rule is said to be still visible in many facets of Dominican society, including public administration. Hillman and D'Agostino (1992) highlight the impact of the colonisation of Hispaniola which involved the transfer of a set of values based on absolutism, authoritarianism and a rigid social hierarchy in which authority and decision-making flowed from the top down. The authors speak of a political system traditionally characterised by a high degree of formalism. Up to

near the turn of the 20<sup>th</sup> Century, despite a move away from traditional authoritarianism and some attempt at the decentralisation of decision-making authority, Dominican politico-administrative decision-making was still considered as highly centralised (Kearney, 1986).

Regarding personnel administration and staffing of the public service, apparent in the Dominican presidential system is the tradition of personalistic government and personalistic decision-making (*personalismo*), with power highly centralised in the executive branch. Since the early sixteenth century, the DR has continued to operate with a spoils system<sup>6</sup>, despite repeated attempts at the enactment and implementation of a civil service law and the establishment of a merit- and career-based administrative infrastructure. Kearney (1986:146) noted the result of this spoils system being a bureaucracy that is “inefficient, unstable and forgetful”. Loss of institutional memory results in each new administration evidencing “a collective amnesia, forgetting or ignoring the accumulated knowledge and experience of previous administrations.”

#### **1.5.2.5 Structure of Government**

The Constitution, promulgated on 14 August 1994, defines the Government of the DR as being democratic, republican, and representative. National powers are distributed amongst independent legislative, judicial and executive branches. The structure of the Dominican government is illustrated in Appendix VII. The composition and functioning of each branch is discussed in turn below.

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<sup>6</sup> The spoils system involves the rewarding of government jobs to friends and party supporters resulting, quite often, in bureaucracies being staffed from top to bottom by the executive.

### **The Legislature**

Legislative power is exercised by a bicameral National Congress composed of two chambers – the Senate (32 members) and the Chamber of Deputies (178 members<sup>7</sup>). Members of both chambers are elected by popular vote to serve four-year terms. Since 1994, elections are held every two years alternating between presidential elections and congressional/municipal elections.

Political parties and a political party system in the modern sense had a very short history in the DR, dating back only to the early 1960s. The three major political parties are the Dominican Liberation Party (PLD), the Dominican Revolutionary Party (PRD), and the Social Christian Reformist Party (PRSC), with several other minor parties. In August 2004, Dr. Leonel Fernández of the PLD assumed the Presidency of the DR from Hipólito Mejía of the PRD. In the result of the 2008 parliamentary elections, 96 of the 178 Chamber of Deputies seats and 22 of the 32 Senate seats were controlled by the PLD.

### **The Judiciary and Legal Tradition**

The Dominican Republic is a civil law jurisdiction belonging to the family of Romano-Germanic Law. Originally based on the Spanish legal system, the present day system is derived, in the most part, from laws or statutes known as the French Napoleonic Civil Code, introduced to the country during the period of Haitian occupation. Upon Haitian withdrawal, the Dominican National Congress adopted the Code, which in 1884 was translated into Spanish and became the basis of the modern legal system.

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<sup>7</sup> The number of seats in the Lower House was increased to 183 in the last 2010 parliamentary elections.

The Dominican judicial system is based largely on the French judicial system of organisation. At the apex is the Supreme Court of Justice, which works as an appeals court for all judgements rendered by judicial courts. The Supreme Court is formed of sixteen judges appointed by the National Judicial Council, an institution created as part of the 1994 constitutional reform to safeguard the independence of the judiciary.

Other courts in the judicial system are the Appeals Courts, Courts of First instance, Magistrates Courts, Justices of the Peace and Land Courts. Also in operation are specialised courts with jurisdiction over specific areas such as administration, labour and real estate. Included in this group is the Superior Administrative Tribunal, formed of five judges, with jurisdiction over appeals filed by private parties against decisions of the public administration.

### **The Executive**

Executive power is exercised by the President of the Republic, together with a Vice-President, and a Cabinet of Ministers designated by the President. As chief executive, the President is the head of State, government, and public administration. As head of the public administration machinery, the President's powers are extensive and wide-ranging. Under the Constitution, the chief executive is tasked with regulating all matters relating to the Customs Service. The Civil Service Act provides for the President to discretionally appoint individuals to a wide range of positions outside the normal recruiting processes. This includes directors of autonomous and decentralised state entities and their immediate subordinates, as

well as executive branch appointees who exercise high level administrative, managerial and consultative functions.

Historically, the result of such leverage in appointments and removals has been a patronage-dominated public administration system. Jobs were doled out in return for loyalty and service rather than on the basis of merit, with staffing conducted often as a favour to the political supporters of winning candidates, or ministerial or agency appointees. This method usually resulted in wholesale staffing turnovers within ministries and departments with virtually every change of government.

#### **1.5.2.6 The Internal Revenue Department (DGII)**

The General Directorate of Internal Revenue (DGII) or the Internal Revenue Department is responsible for the administration and collection of the principal internal taxes within the DR. The department came into being with the enactment of Law 166-97 which merged the former departments of Internal Revenue and Income Tax. Principal taxes collected are Income Tax (Corporate and Individual), Inheritance and Gift taxes, Motor Vehicle Tax, Capital Gains Tax, Real Property Tax, and ITBIS.

With regard to institutional and human resources organisation, the DGII is headed by a General Director assisted by four operational Sub-Directors responsible for the various administrative and technical areas. Attached at Appendix VIII is the pre-reform organisational structure of the DGII.



Appendix IX(a) shows the contribution of the taxes collected by both focal organisations as a percentage of total tax revenues for the period 2000-2007. DGII collects on average over 40% of total tax revenues. Appendix IX(b) illustrates DGII's revenue projections and collections for the financial years 2001-2006. Over most of the period, actual receipts slightly surpassed targeted amounts, the most impressive performance achieved in 2005. Comparing 2005 year end totals with those for the ending of 2004, the department collected 34% more, an equivalent of \$RD21.1 billion. According to senior officials in the DGII, the magnitude of the difference between 2005 projections and collections (almost 11%) far surpassed the expectations of central government authorities and international organisations that oversee the nation's economic performance.

#### **1.5.2.7 The Customs Department (DGA)**

In 1845, faced with the need to raise revenues and to regularise customs activities, a system of Customs was established in the Dominican Republic. As a result of large loans obtained by government in 1916, Customs was administered by the U.S. military occupation government. The direction and supervision of the Customs Service was reinstated to the Dominican Government through Act No. 429 of March 20, 1941, when the nation had repaid the majority of its debt.

The General Directorate of Customs (DGA) or Customs Department collects a number of international duties and taxes<sup>8</sup>. As at 2008, the department employed a

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<sup>8</sup> These include Import Tax, Selective Consumption Tax, Excise Tax, and Tax on the Transfer of Industrialised Goods and Services (ITBIS). The ITBIS is a value added tax applicable to the transfer and importation of most goods, and to most services.

total of 5,240 employees distributed across a central headquarters function, and Collectorates in charge of land, sea and airport operations.

Whilst in the 1960s and early 1970s import duties constituted the greatest single source of government revenue, accounting for 40–45% of the annual total tax revenues, figures for the new millennium indicate that the share of customs import duties in government tax income fell on average to below 30% (See Appendix IX(a)).

Appendix IX(c) highlights the DGA's revenue performance for the financial years 2004-2006. Despite a fall in revenues by 11.2 % between 2005 and 2006, collections in all three years surpassed targeted projections, most markedly in 2005. During that year, the department collected an excess of \$RD6.2 billion or 12% more than the estimated amount.

## **1.6 THE UTILITY OF THE STUDY**

This study contributes to the literature on autonomy in four ways. First, in most empirical studies, autonomy is treated as an independent variable, usually to assess its impact on organisational performance (See e.g Fjeldstad and Therkildsen, 2004; Taliercio, 2004; Joshi and Ayee, 2009). Whilst performance outcomes are certainly important, such studies only relay part of the story of what is happening. In this study, autonomy is being treated as the dependent variable, with a primary focus on some of the necessary pre-conditions for its actual practice.

Second, the work documents the experience of Caribbean countries in implementing NPM reforms that involve decentralisation and autonomisation. Whilst a great deal has been written about public sector reforms and the experiences of developed OECD countries, comparatively less is told of the experiences within developing economies, particularly countries in the Caribbean region (Aveni, 2002). Whilst the Jamaica agencification programme has captured the attention of some researchers (Armstrong, 2001; Talbot, 2002; Pollitt and Talbot, 2004), reform outcomes in other Caribbean countries are scarcely documented. The research therefore attempts to fill this void in the literature.

Third, the study extends beyond the traditional focus of examining *whether* the exercise of bureaucratic autonomy co-exists alongside efforts at political control, to try to understand *when* bureaucratic discretion is maximised (e.g agency resources, support of the executive). Fourth and most importantly, the study is distinct in part from existing literature on autonomy in its analysis of comparative government and comparative legal tradition as potential influences on the exercise of administrative discretion. Regarding comparative government, whilst there is literature that addresses the issue of whether different regimes (parliamentary v. presidentialist) generate bureaucracies that are markedly different (see Moe and Caldwell, 1994), such work is theoretical; more suggestive than definitive in its treatment of the issue. No study, of which this author is aware, has undertaken an empirical analysis of the nature described.

It is anticipated that the findings from the research will not only broaden understanding of the process and outcomes of autonomisation outside of its usual context, but will also deepen current knowledge of the ways in which administrative

discretion is enabled or constrained. Increased knowledge and understanding have the potential of contributing to improvements in the design and implementation of decentralised arrangements.

## **1.7 STRUCTURE OF THE STUDY**

The thesis is divided into three main parts incorporating ten chapters. Following the introduction; Part I, which comprises Chapters 2 and 3 reviews the relevant literature on the subject of study. Chapter 2 presents the main concepts, theories, and issues surrounding bureaucratic autonomy. The chapter highlights the challenges facing policymakers of granting greater managerial freedoms and maintaining political accountability - the so-called paradox of bureaucratic autonomy and political control. The chapter concludes by reviewing empirical evidence on the practice of autonomy. Chapter 3 presents the conditioning factors gleaned from the literature that are likely to impinge on the capacity of the bureaucracy to act autonomously. Broad environmental factors identified are grouped under three main categories – intra-organisational factors operating at the internal level of bureaucratic functioning, as well as meso- and macro-institutional level factors in the organisation's broader environment as points at which internal pressures are applied.

Part II of the thesis, Chapter 4, focuses on the methods of the study. The Chapter explains the framework devised to operationalise and measure the nature and extent of factual bureaucratic autonomy, as well as the analytical framework developed to guide the analysis and interpretation of potentially conditioning factors. Also explained is the methodology used for comparing the cases, as well as the manner of data analysis and reporting.

Part III of the study comprising Chapters 5-10 presents the study's empirical findings. Chapter 5 responds to the first research question by reporting, in each of the two cases, the rationale behind reforms as well as the choice of institutional forms. Addressing the second question posed in the study, Chapters 6 and 7 use the conceptual framework presented in Chapter 4 to analyse, along the various dimensions, the nature and extent of factual bureaucratic autonomy within the revenue administrations. In Chapters 8 and 9, the study's second analytical framework is used to examine and present findings on whether selected factors actually constrain or enlarge the flexibilities of the bureaucracy. Chapter 10 concludes by pulling together the cursory analyses undertaken in the previous chapters, comparing side by side in greater detail the findings for the two cases. Conclusions are drawn on the main issues of study and determinations made as to whether or not hypotheses have been borne out.

## **PART I: LITERATURE REVIEW**

## CHAPTER 2

### DECENTRALISATION AND AUTONOMISATION: A SYNOPSIS OF THE KEY ISSUES

#### 2.1 INTRODUCTION

Decentralisation of responsibility and authority for public services provision has, over the past two decades, become a familiar theme in development theory and practice, and an essential part of the governance reform agenda. Broadly referring to the process of distributing power in government, the term decentralisation covers a range of possible ways for government to divest its responsibilities to organisations operating on the fringes of the state, outside the central government apparatus (Yoder, 2010). The concept has several overlapping connotations<sup>9</sup> but, as a component of new public management, decentralisation takes on a managerial dimension, with the main focus being organisational restructuring coupled with operational changes (Larbi, 1998). This chapter describes the process of administrative decentralisation and autonomisation, presenting the intellectual and pragmatic arguments underlying such reform efforts. After unpacking some of the conceptual complexities surrounding autonomy, and highlighting some of the shifts in thinking on the subject, the chapter concludes with an examination of the empirical evidence to date on the actual practice of bureaucratic autonomy.

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<sup>9</sup> A distinction is made between *political decentralisation* (devolution), which involves the transfer of formal authority to pass laws or to make policy decisions from the national government to elected bodies at the sub-national levels; and *administrative decentralisation* (e.g. deconcentration, delegation) where authority is given to a body that is appointed rather than elected, and that is primarily managerial, administrative, or expert rather than political (Pollitt et al, 1998). It is the latter in which this research is interested.

## 2.2 THE DECENTRALISATION OF MANAGEMENT DECISION-MAKING

Up until the end of the 20th century, the departmental hierarchical form served as the building block or primary vehicle for administering public services. Over time, a number of criticisms were levied against this administrative model – the centralist bureaucratic modality reduces flexibility, adaptability, speed and creativity particularly in field service delivery; increases co-ordination and managerial costs; and perpetuates top-down authoritarian approaches to problems requiring a genuine partnership approach (Wunsch, 1999). One of the possible hallmarks of the post-modern 21<sup>st</sup> Century state has been the paradigm shift involving a disestablishment or dismantling of centrally regulated bureaucracies (OECD, 2002) and their replacement with a range of alternative mechanisms for service provision (Kaul, 1998). Figure 2.1 illustrates the structural and operational innovations resulting from this type of reform.

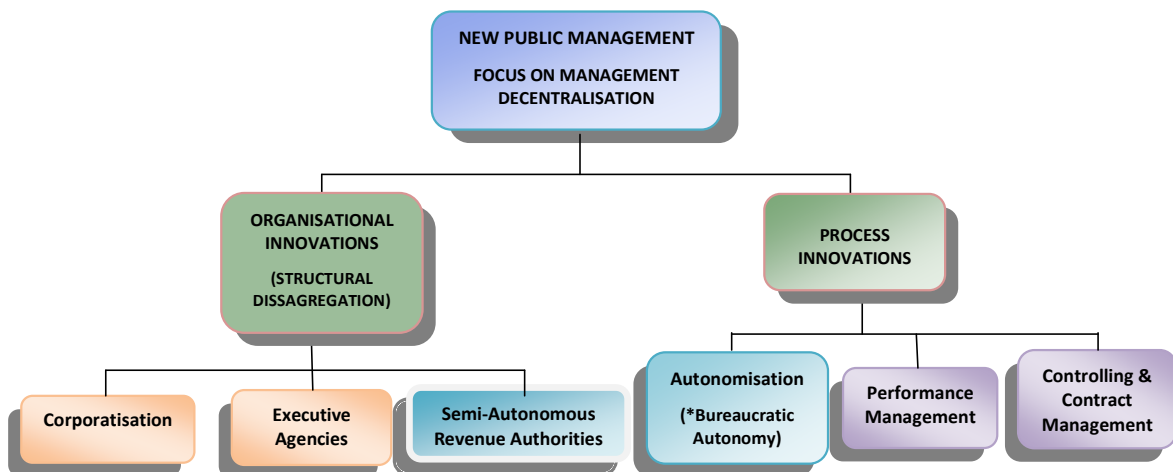


Figure 2.1: A Typical Management Decentralisation Model

The following two sections elaborate on each key feature.



### **2.2.1 DISAGGREGATION AND THE NEW STRUCTURAL ARRANGEMENTS**

Structural disaggregation is the breaking up or “unbundling” (Talbot, 2004a:11; Caulfield, 2004:229) of large-scale vertically integrated, monolithic government bureaucracies. The traditional bureaucratic structure is reworked so that there is a policy/implementation division of labour. The resulting split is a small, simplified and strategic policy core, with larger units ‘hived off’ (Pollitt et al 2004:3) and placed at arm’s length from the departmental form. Whereas the core would be responsible for planning, co-ordination, consultation and monitoring; the operational units would execute operational tasks. The belief is that ‘steering’ in terms of setting goals and direction, and ‘rowing’, in the form of doing and achieving results, while clearly related, ought in practice to be decoupled (Osborne and Gaebler, 1992; Thynne and Wettenhall, 2004). This centrifugal process of ‘unbundling’ or ‘unravelling’ (Flinders 2008:3) has been nurtured in developing countries not only by international bodies such as the International Monetary Fund (IMF), the Organisation for Economic Co-operation and Development (OECD), and the World Bank, but also by some of the leading international development consulting agencies (Madon et al, 2010).

Formal breach with the departmental hierarchy can occur in several ways. Examples of delegated arrangements include corporatisation, the move towards ‘agencification’ (Pollitt and Bouckaert, 2000:165), and the establishment of semi-autonomous revenue authorities.

Corporatisation involves converting departments, usually those engaged in business or commercial activities, into free-standing enterprises which are then granted a new legal personality with authority according to private company law.

Agencification is driven by two separate reform discourses – the first one stressing the well known elements of the NPM reform agenda<sup>10</sup>, and the second discourse emphasising the gradual development of a regulatory state<sup>11</sup> (Bach and Jann, 2010). Agencification has a long tradition in a number of European countries, including Finland, Sweden, the Norwegian central government, and the German federal administration.

However, it is the 1988 British experience with ‘Next Steps’ agencies which is the internationally best known example of this kind of development. The U.K. model has been emulated in virtually every continent, with differences in agency size, legal form, and internal governance structure. Included in the agency ‘family’ are a number of differently named entities including Special Operating Agencies in Canada; Performance-Based Organisations in the U.S.; Independent Administrative Institutions in Japan; ZBOs<sup>12</sup> and *Agentschappen* in the Netherlands; Crown Entities in New Zealand; and Special Purpose Vehicles in India. Programmatic creation of executive agencies has also been embarked upon by a number of developing and transitional economies, including Thailand, Latvia and Tanzania. The creation of executive agencies has been dubbed the *pièce de résistance* of public sector reform efforts in Jamaica (Talbot, 2004b:297).

The agency model has become a popular vehicle for executing a range of public functions including prison administration; the promotion and evaluation of social and

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<sup>10</sup> Here the emphasis is on separating policy and implementation, contract steering and stronger task orientation.

<sup>11</sup> The concern here is the need for some degree of independence from direct political intervention in government regulation, and the necessity for a long term credible commitment to government regulatory policies.

<sup>12</sup> ZBO stands for Zelfstandig Bestuursorgaan which in Dutch translates to ‘autonomous administrative authority’.

scientific activities, particularly education, health care, social security, and social assistance; and the regulation of social or economic affairs.

Traced to the agency model is the particularly noteworthy trend involving the merger of customs and tax departments into semi-autonomous revenue authorities (SARAs). According to Fjeldstad and Moore (2009), the case for giving autonomy to revenue collection agencies emerged naturally from NPM thinking. Notable are the roles of key players such as the IMF, the World Bank, the U.K. Department for International Development (DFID) and a linked network of international consultants in nurturing and promoting the initiative particularly in Anglophone Sub-Saharan Africa<sup>13</sup>, Francophone Africa escaping any similar barrage of persuasive ideas.

### **2.2.2 AUTONOMISATION AND REGULATORY REFORM – THE FOCUS ON OPERATIONAL CHANGES**

Structural changes of the type outlined above often go hand-in-hand with regulatory reform (Minogue, 1998), deregulation being the first step towards re-regulation (Talbot, 2004; Christensen et al, 2008). Focusing on de-regulation, within the decentralised framework, a change in the locus of control is occasioned through a process of 'autonomisation' (Kickert and Verhaak, 1995:532; Pollitt et al, 2001:275), or the delegation of autonomy by the centre to decentralised units. Theoretically, managers are freed to manage through reduced controls and political interference over issues such as budgets, organisation and personnel. The idea underlying this new managerialism is that bureaucrats would make use of sound principles

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<sup>13</sup> SARAs exist in many Anglophone African countries - Ghana (1985); Uganda (1991); Kenya (1995); Tanzania (1996); Malawi (2002). In South and Latin America the trend was led by Peru (1988), followed by Venezuela (1994); Mexico (1997); and Guyana (1999).

borrowed from private sector practice to engage in hands-on professional management.

Regarding re-regulation, the substantial risks involved in granting (greater) freedoms to distributed entities are well documented (see for example Ramamurti, 1987; Flinders, 2004). Hence repeated calls for the anchoring of such freedoms within a policy framework appropriate to the devolved environment, matched by bureaucratic *ex post* accountability to other parts of government, to service users, and to elected representatives and citizens (Devas et al, 2001; Batley and Larbi, 2004; Kidd and Crandall, 2006). Such a framework would need not only to satisfy policymakers' informational needs but also to ensure that serious failures are prevented or promptly redressed. Accompanying autonomisation, therefore, is a new control system based on performance indicators and performance assessment, whereby focus is shifted from *a priori*, process-oriented and pervasive controls, towards a *posteriori*, results-oriented strategic controls (Islam, 1993). The new system employs various techniques such as performance budgeting, the development of steering dialogues, pay-for-performance systems, and performance reports as a means of formalising ministry/agency relations.

Contrary to the idea of regulatory reforms producing what some term as the 'post-bureaucratic' organisation, more appropriate is to consider such change as resulting in 'a "cleaned bureaucracy" – i.e. one where the unnecessary detritus of layer upon layer of rules is cleaned away in favour of a simpler, cleaner but nonetheless...robust set of 'strategic' controls' (Talbot 2002:22).

### **2.3 DECENTRALISATION – THEORETICAL ARGUMENTS AND PRACTICAL UNDERPINNINGS**

A number of theoretical or intellectual underpinnings and pragmatic arguments provide the rationale for decentralisation. Regarding theoretical arguments, thinking in the NPM paradigm is underpinned by a number of theoretical perspectives incorporated under the broad heading of ‘economic neo-institutionalism’ – otherwise referred to as ‘new institutional economics’. Included in this collective body of work are the public choice and principal-agent models, as well as the property rights theory. Highlighting the need to understand individuals and individual behaviour within organisations, the models posit a number of specific assumptions about human behaviour centred on self-interest (individuals take actions from which they stand to benefit), instrumentality (individuals assign relative weightings to preferred outcomes), and individual rationality (individuals choose the course of action that give the greatest satisfaction). From these models came new performance-motivated administrative and institutional arrangements, new structural forms, and new managerial doctrines (O’Flynn, 2007).

Turning to pragmatic benefits, a number of economic and administrative cases have been made by governments, external actors, and the increasingly influential civil society lobbyists for decentralising public service delivery. While economists tend to focus their analysis on costs and benefits, other social scientists and practitioners are generally concerned with processes and the democratisation aspect.

A number of studies exists linking decentralisation and autonomisation to improved performance (see for example, Batley and Larbi, 2004; Taliercio, 2004, Christensen and Lægreid, 2007). Performance is increased in areas of economy, efficiency,

effectiveness, quality, or a combination of these. Improved technical or 'X' efficiency is achieved through greater flexibility and cost-consciousness at the local level. Allocative efficiency is improved through the use of task-focused agencies working in specific policy/service delivery areas, providing a mix of services and expenditure shaped by local user preferences.

Whilst the evidence that movement away from hierarchical forms leads to enhanced performance is still far from conclusive, Batley and Larbi (2004) demonstrate that autonomy can lead to enhanced performance when and if the conditions exist for its effective operation. For Grindle (1997:488), it was not autonomy *per se*, but rather the 'facilitating condition' which it provided to organisations and their managers to build cultures which encouraged performance-oriented norms and behaviours. Likewise the argument attributing improvements in revenue collection not solely and directly to the creation of autonomous revenue agencies, but to the 'increased...potential of African governments to enhance central government revenues by acting as a conduit for the initialisation of a range of sensible reforms in tax administration (Fjeldstad and Moore, 2009:13).

Disaggregating a multi-purpose ministry into a single or few-purposes agency gives greater focus to the task at hand, which in turn raises expertise, quality and efficiency. This is because the new units and the now more visible manager that replaces the once faceless bureaucrat can be more easily held to account (rendered transparent) and made responsible for their actions.

Yet another argument focuses on decentralisation and its impact on local governance. Decentralising government enables more direct participation in

governance processes through citizens' empowerment and the development of social partnerships (ECA, 2003). Figure 2.2 is the analytical framework devised by the World Bank to aid understanding of the successes and failures of centralised service production, and to explain new proposed institutional arrangements.

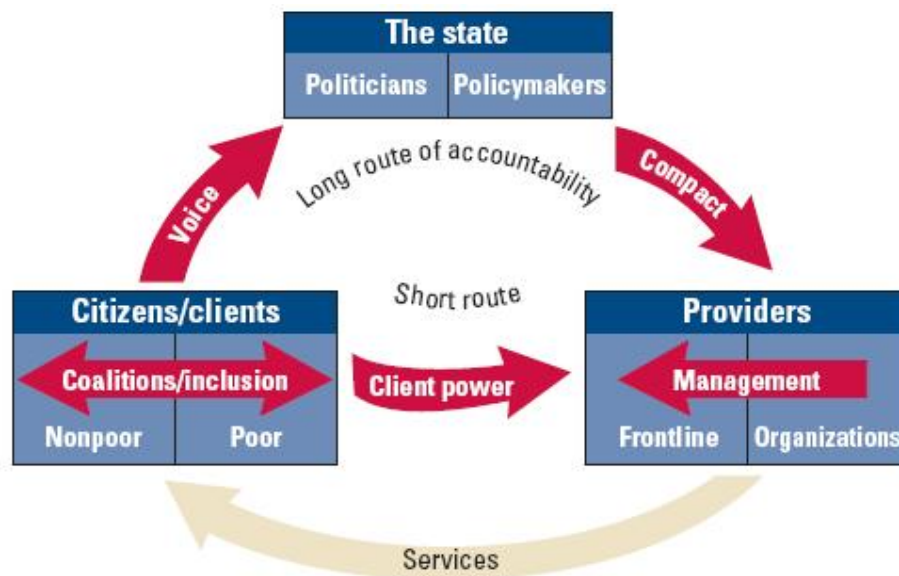


Figure 2.2: Public Service Delivery - The Long vs. Short Route of Accountability  
Source - World Bank (2004:49)

Identifying actors in the public service delivery chain and their relationships of power and accountability, the Bank refers to the frequent reliance on and oft-time failures of the traditional “long-route accountability” (World Bank, 2004:55) – clients as citizens influencing policymakers and policymakers influencing providers. Solving the problem, it argues, requires mentally and sometimes physically separating the policymaker from the provider and thinking of the relationship between the two as a compact. Invoking the ‘short route’ (ibid), service is delivered by the provider (who is either rewarded or penalised based on performance), with citizens/client acting as purchasers, co-producers and monitors of the service. Mehrotra (2006) opines that,

if collective voice at the local level brings local decision-makers closer to the constituents they serve, thereby placing pressure on local functionaries to respond to local needs and preferences, a number of benefits can result. Benefits of this more nuanced approach to service delivery include improved responsiveness, choice and accountability; as well as the potential for greater system learning and innovation. It is indirectly through these factors that decentralization affects the quantity, quality and equity of public services (Conyers, 2007).

## **2.4 BUREAUCRATIC AUTONOMY – A CONCEPTUAL OVERVIEW**

Researchers on the subject of bureaucratic autonomy speak of definitional and conceptual challenges which later give rise to methodological problems (Young and Tavares, 2004; Verhoest et al 2004). The following section defines bureaucratic autonomy, both in general as well as for the purpose of this study. Later discussed is the shift in thinking surrounding the concept.

### **2.4.1 DEFINING AUTONOMY**

Despite the vast amount of literature on autonomy there is still no commonly accepted definition. Autonomy has been described as a complex, ‘fuzzy political concept’ (Kidd and Crandall 2006:08), one whose meaning has become more vague with the passage of time, a meaning which cannot be translated into any specific local, procedural and organisational arrangements (Fjeldstad and Moore (2008).

Autonomy derives from the Greek words for auto (self) and nomos (law), hence self-law. The Collins English Dictionary (1999) defines ‘autonomy’ as the right or state of



self government. The notion of self-governance, self-rule or self-direction is found throughout a vast amount of writing on the subject.

According to Davis (1969), a local official or civil servant exercises autonomy whenever (s)he is free to choose among possible courses of action or inaction. This view is affirmed by Brooke (1984) who argues that an organisation is autonomous when it can take decisions on issues reserved to a higher level in comparable organisations; and Ringquist (1995) who suggests that an entity exercises autonomy when it makes judgements regarding policy actions not prescribed in detail by formal rules or regulation. Lying at the heart of these definitions is the central theme of decision-making - freedom to determine how best to achieve an objective or satisfy a particular preference.

Such succinct and straightforward definitions, however, lose sight of other critical attributes of autonomy. Leddy and Pepper (1985) go one step further by stating that the autonomous person is capable not only of making rational and unconstrained decisions, but also of acting on those decisions. Gillon (1995:60) adopts a similar philosophical stance, defining autonomy as 'the capacity to think, decide, and act on the basis of such thought and decision freely and independently and without hindrance'. For Carpenter (2001:3), bureaucratic autonomy comprises certain essential conditions including 'political differentiation' and 'unique organisational capacities'. Autonomous bureaucracies are politically differentiated from the actors who seek to control them. Possessing unique preferences, interests, and ideologies which may diverge from those of politicians and organised interests, such bureaucracies are able to act on such preferences – i.e. to analyse, to plan, to problem solve, and to create new programmes. Their unique organisational

capacities enable them to fashion around themselves a kind of 'apolitical shield' that permits the effective and efficient advancement of programmes, while running their agencies (Wilson 1989:217). Explicit in these definitions is the perception of autonomy not only in terms of freedom to make choices, but also the ability to act without any impediment.

Inherent within all the above definitions, however, is a misguided impression of unbridled freedoms, i.e. of bureaucracies operating within unobstructed environments. No agency head can ever achieve complete autonomy for his/her organisation (Harrell and Alpert, 1979; Wilson, 1989; Carruthers, 1994). Since politics requires accountability, no one can be wholly trusted to make choices free of legal and administrative constraints, without the risk of anarchy. Important therefore, within any definition of autonomy, is the need for an emphasis on self-governance, albeit within a system of principles. Hence a better and more appropriate definition of autonomy would be 'the freedom for management to evolve its policy and [to] execute it within the framework of broad objectives determined by government' (Mascarenhas 1972:66). Such a definition aptly captures all three important attributes of autonomy - independent decision-making, capacity to act, as well as imposed limitations or constraints on action.

In the case of this research, it is important first to indicate to the reader the study's 'loci of autonomy' (Cribb and Gewirtz, 2007:203), i.e. to identify whose autonomy it is that is being brought into question, and to provide a working definition of the

concept of autonomy. For the purpose of this study, bureaucratic<sup>14</sup> autonomy being investigated within the focal organisations refers to ‘the constrained freedom of the tax administration to take decisions and to implement tax policies and legislation, within a broad framework or system of principles’. Autonomy of the institution is viewed vis-à-vis state and societal actors (e.g. political leaders, government, interest groups, and international organisations). Key issues under investigation here are the ‘domains’ and ‘modes’ (ibid) of autonomy, meaning those spheres over which autonomy is being exercised, and how it is being practised.

#### **2.4.2 TRADITIONAL vs. CONTEMPORARY THEORISING**

Over time, thinking on autonomy has shifted from a very narrow and myopic perspective to more expansive conceptualisations that have allowed for a better understanding of the different forms and functioning of decentralised institutions.

One area where there clearly has been agreement is the perception of autonomy as a continuous rather than a dichotomous variable. Since freedom is not absolute, we refer to relative degrees of autonomy, with agencies being autonomous relative to other organisations and to the parent ministry. Hence we can array entities along a spectrum (ter Bogt, 1999; Kidd and Crandall, 2006), or on an autonomy-integration/‘autonomy-centralisation’ continuum (Brooke, 1984; Halligan, 2004; Thynne and Wettenhall 2004:619, Bach and Jann, 2010:449). At one end are agencies fully integrated into the departmental hierarchy bounded by conditions over which they have little control (determinism); and at the other, are organisations

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<sup>14</sup> Despite the opprobrious or negative connotations usually attached to this word in the public administration literature, implying waste, red tape and inefficiency, the term is being applied throughout this study in a neutral sense as a synonym for the words ‘organisational’, ‘agency’, or ‘administrative’.

positioned at high degrees of arms-length operating according to almost unrestricted choice (voluntarism) (Lundquist, 1987).

According to Christensen (1999), looking at autonomy in this manner is the only way in which it is possible to grasp the rich empirical variation in Western European public administration. Similarly the argument about the need to move away from and reject implicitly binary classifications that seek to label organisational forms in terms of being, for example, centralised/decentralised, dependent/autonomous, and instead try to tease apart the specific meanings and connotations of these terms, 'and by so doing develop an awareness of the existence of gradations or levels, and any potential pathologies' (Flinders 2008:7). Of importance, therefore, is not only the presence/absence of autonomy, but also the shape of bureaucratic autonomy that matters (Beblavý, 2009).

Traditionally, autonomy was viewed as uni-dimensional, with the focus centred solely on formal legal status. Writing on central bank independence, Cukierman (1995:371) notes the importance of legal status as an indicator of the degree of independence which legislators 'meant to confer' on the institution, i.e. the type of decisions the executive leadership is entitled to take and to whom it is to report on such matters. Mascarenhas (1972:71) referred to this as the agency's 'ascribed autonomy', the initial delineation of the domain of action, the boundary or points at which the organisation and the government would interact, as spelled out in statutes or articles of association.

But formal measures of autonomy only tell part of the story. Not only does such a focus ignore the multi-dimensional character of this phenomenon, it also overlooks

the existence of a temporal dimension. In addition, it erroneously presents as axiomatic a correspondence between formal bureaucratic autonomy granted to agencies and the real autonomy exercised by these entities in practice. This warrants the need for a broadening of our conceptual thinking from this 'coarse-grained to a more fine-grained perspective on autonomy' (Young and Tavares, 2004:231).

Not surprising, therefore, is the more recent shift in contemporary thinking. On the subject of dimensions, a number of typologies of bureaucratic/institutional autonomy have emerged (see e.g. Berdhal, 1990; Bresser-Pereira, 2004; Christensen, 1999; Kohtamaki, 2003; McGrath, 2001). Such typologies distinguish between dimensions such as legal, financial, strategic and operational autonomy. In one of the most developed typologies to date, Verhoest et al (2004) distinguish between six non-overlapping dimensions of autonomy (legal, structural, financial, policy, managerial and interventional), grouped according to those factors which provide an organisation with its decision-making competencies, and those which serve to shield or exempt the organisation from constraints on the actual use of such competencies.

Some researchers have also attempted to identify which of these dimensions are the most germane to improved organisational performance. Financial autonomy is often cited as carrying relatively more weight in permitting the organisation to achieve its goals and objectives (Mascarenhas, 1972; Kidd and Crandall, 2006). Giving managers the scope to experiment with resource allocation and financing might help ease the problems associated with fiscal centralisation, such as the irregularity of budgetary transfers and associated disruptions in paying suppliers

(Khaleghian and Das Gupta, 2005). Also added as being critical to the autonomy profile are other dimensions of personnel autonomy and governance mechanisms. By helping organisations to rise above public sector norms (ibid) and managers to develop a positive organisational climate (Grindle,1997), a certain degree of autonomy in personnel matters is an important precondition for performance improvement.

Also important in the autonomy discourse is the issue of temporal dimension – autonomy is not static but dynamic in its operation. Moe (1995:146) contends that choices made in the formative round of decision-making can be reversed or modified – ‘[b]attles lost today can be won tomorrow, and vice versa’. Likewise there is the argument about the tendency to view the process of decentralisation as a one-off event that transfers power at one time and in one quantity to the new institutional location (Bossert and Beauvais, 2002). Failure to take into account these real life changes that occur over time results in a masking of the dynamic relationship of changing powers between the centre and the periphery.

Equally noteworthy is the understanding that autonomy is not so much a legal characteristic as a real practice (Batley, 1999). Commanding recent and even more widespread attention is the issue of potential dissimilarities between the formal theoretical autonomy granted by law and the agencies’ practical/real/(f)actual (Yesilkagit, 2004; Bouckaert and Peters, 2004; Bach and Jann, 2010) exercise of autonomy. In their study of semi-autonomous public sector organisations, Yesilkagit and van Thiel (2008) found no linear relationship between the organisation’s formal and *de facto* autonomy. Understanding of the law and observation of legal

functioning leads us to the realisation that even though laws are explicit, they are incomplete. Laws are incapable of specifying, under all contingencies, the limits of authority between central/political authorities and the bureaucracy. Given that autonomy enhancing elements have proven far easier to legislate than to realise in practice (Joshi and Ayee, 2009), this 'distinction between formal and factual autonomy is an important aspect' (Ziegele: 1998:2).

In their examination of state cultural policy executed by the autonomous Swedish Foundation Culture of the Future (FCF), Predelli and Baklien (2003) vividly capture the essence of the interplay between formal autonomy and institutional constraints, and the resulting factual autonomy that emerges from such interaction. Figure 2.3 is a modified version of their graphic illustration.

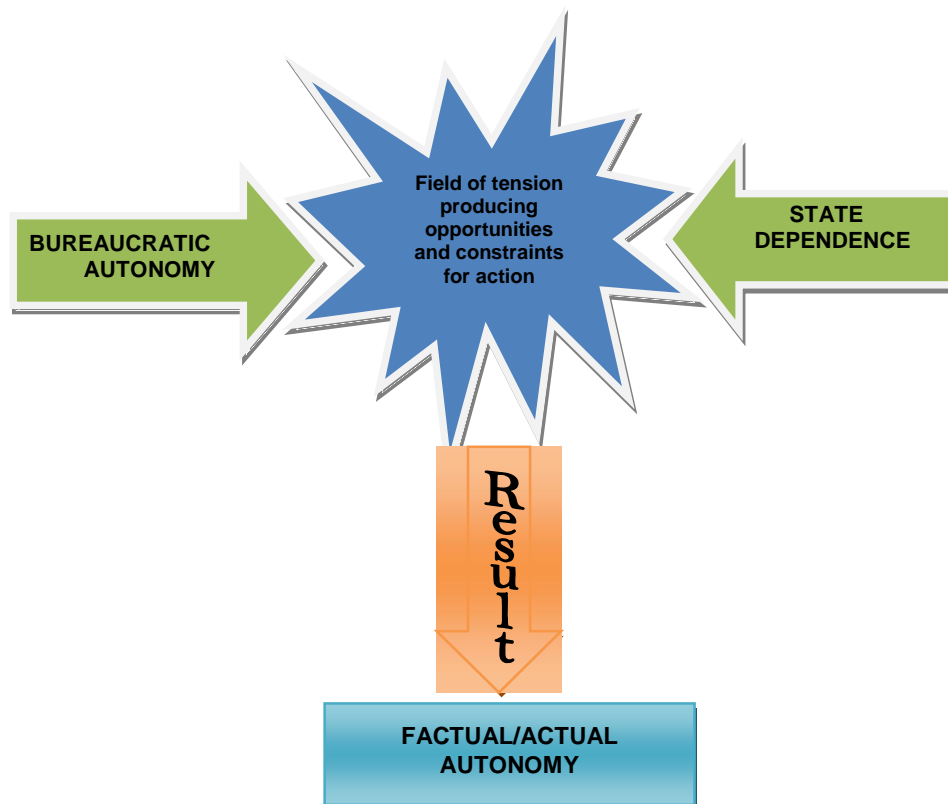


Figure 2.3: The Autonomy/State Dependence Field of Tension

Source: Adapted from Predelli and Baklien, 2003:p.302

The authors speak of a 'field of tension' (ibid:203) resulting from mixed pressures created by forces pulling in the opposite direction of political independence and institutional autonomy on the one hand, and political control and state dependence on the other. Such forces, they argue, work to reduce FCF's actual institutional autonomy in formulating and implementing cultural goals. Predelli and Baklien draw our attention to the fact that, even though these forces can serve as potential constraints, they can under different circumstances provide opportunities for action. Constraints arise, for example, when central government takes decisions in matters which it has previously delegated.

Note, however, the argument presented by Rhodes (1999) that constraints can be self-imposed. A party may not realise it has room for manoeuvre or, it may decide not to take advantage of whatever discretion it has. This idea Elsig (2011) aptly captures in his argument that while autonomy differs, it is important to assess how agents read their mandate and define their role. Understanding the reading of the role is pivotal in order to explain the different approaches chosen by agents to exercise their autonomy. Also important is the argument that what matters is not always autonomy as such, but the way in which autonomy is perceived. Lægreid et al (2008) opine that, even if managers' perceived autonomy does not accurately reflect the actual level, perceptions matter because they guide the managers' actions and because they have a symbolic function. Such assessments may result, for example, in the agency's use of certain non-legal powers and its exercise of informal autonomy. Researchers refer to such informal means as achieved autonomy (Mascarenhas, 1972) or assumed autonomy (Young and Tavares, 2004). Carpenter (2001:4) contends that bureaucratic autonomy lies less in *fiat* than in



*leverage*. Organisations have several avenues for enlarging their scope for decision-making, through for example, access to channels of political power, image/reputation, leadership capabilities, technical capacity, or control over crucial information (Hanf, 1978).

These developments in conceptual thinking have allowed for a much broader analysis that focuses on autonomy not only in terms of formal legal status, but also in terms of the multidimensional, dynamic, factual and informal aspects of this phenomenon. Mere form, in other words, can be separated from real substance.

## **2.5 AUTONOMY AND CONTROL – CONTRADICTION OR TRUISM?**

Previously highlighted were the types of regulatory reforms that usually accompany operational changes involving an empowerment of the bureaucracy. Operating maxims of ‘let managers manage’, sitting alongside stronger central control characterised by a trajectory of more rules and a strengthening of frame steering is currently one of the main governance paradoxes facing public administration and modern bureaucracy (Polidano and Hulme, 1999; Goddard and Mannion, 2006; Helgoy et al, 2007; Borzillo, 2008; Carboni, 2010). The ‘paradox of managerialism’ (Maor, 1999:5) results in political executives investing in the public administration’s managerial capital (letting managers manage) and their disinvesting in its political capital (i.e giving ministers greater capacity for setting strategic direction and strategic priorities). Oft time the outcome is managerial discretion either being strangled at birth so that not much autonomy is ever established, or administrative freedoms being ceded, but in practice being ambiguous or whittled away over time. Hence the argument of this duality of autonomy and control seeming logical when

considered in isolation, but irrational, inconsistent and absurd when juxtaposed (Gilbert and Sutherland, 2013).

For autonomy to prevail, the issue therefore seems to remain one of achieving balance – balancing the control necessary for a united strategy with sufficient autonomy to foster initiative and responsiveness. Denton and Flinders (2006:66) argue that, from a political perspective, the main issue revolves around ‘how to reconcile the centrifugal pressures of delegated governance with the centripetal and in many ways centralising logic of ministerial responsibility’. Likewise, for Lægreid et al (2008), the challenge is to find ways of making agency autonomy and democratic accountability complementary and mutually reinforcing, rather than competing values. It is about how to make agency independent and at the same time accountable both upwards to politicians, horizontally to other agencies and downwards to clients and citizens. Achieving such a balance can be difficult and ambiguous, particularly if the issue has a redistributive character (Lægreid et al, 2005).

Focusing on the applicability of autonomy within the various policy areas, each type of service, it is argued, will have its own balance (Khaleghian and Das Gupta, 2005). For some, such as law enforcement and licensing, where conformity and consistency are essential, managerial autonomy may need to be circumscribed. But for others, e.g. investigating health hazards, providing health education and mobilising community partnerships, moderately widening the scope of authority can promote the adaptation of services to local circumstances, without compromising the essential integrity of the function or impeding the need for consistency in these

areas. Similarly the type of argument advanced by Caulfield et al (2006:2, *emphasis added*):

‘...high levels of organisational autonomy may work well for the economic activities of the government, *including revenue collection*, while some traditional public services in the public sector, such as police and regulation, are perhaps less amenable to that degree of autonomy.’

A quick examination of some empirical evidence will help shed light on outcomes in some of the policy areas where reforms were undertaken.

## **2.6 AUTONOMY AND CONTROL – SOME EMPIRICAL EVIDENCE TO DATE**

Research findings on the capacity of agencies to exercise ascribed powers to act autonomously have shown mixed results. Managers within Norwegian regulatory agencies perceived that, relative to other agencies, they were subjected to stronger controls and audit by both executive and legislative bodies such as their parent Ministry, the Finance Ministry, parliament’s ombudsman, and the mass media (Lægreid et al, 2005). In Hong Kong likewise, regulatory agencies have shown no tendency towards factual autonomisation. Public order and safety type work (police, immigration, fire service) was found to be negatively and significantly associated with managerial autonomy (Painter and Yee (2011). Hong Kong’s local context and its colonial legacy, where the police played a pivotal role in quelling anti-government riots, has contributed to the need for political executives to maintain tight control over state security affairs. Turning to fiscal administrative reforms in Anglophone Africa and operations within semi-autonomous revenue authorities, there is a strong tendency to an absence of factual autonomy. Despite the rhetoric and debate about

autonomy, 'there has been very little loosening of the political and bureaucratic grip of central executives over revenue collectors, with Presidents and Ministers of Finance still being very much in control (Fjeldstad and Moore, 2008:1)

But empirical evidence also reveal cases where freedom to manage is more a reality. Talbot and Caulfield (2002) in their preliminary evaluation of the outcomes of agency type reforms in the developing and transitional economies of Jamaica, Tanzania, and Latvia found evidence of high levels of autonomy within executive agencies. Latvian agencies experienced wide-ranging freedoms to operate in a businesslike way, even though such freedoms were hardly ever anchored within any firm policy or performance framework. In Tanzania, agencies were far more autonomous than either the legislation or the textbooks prescribed. Highlighted was the case of TANROADS whose use of its ability to make various allocative decisions subsequent to its change in legal status led to a ruffling of some feathers in some political parts of the government machinery. Similarly in Jamaica, despite autonomy in financial management proving problematic and with complaints of the Finance Ministry's interference in operational matters, human resource management freedoms were extensive, with the Public Service Commission adopting a hands-off, light touch approach to agency regulation.

Analysing the case of the U.S. Federal Emergency Management Agency (FEMA), Almeida and Klinger (2008) concluded that the innovation and entrepreneurship this agency demonstrated during the period 1993-2001 under the leadership of James Witt clearly met the criteria for 'bureaucratic autonomy'. Rather than confining itself to acting only in those areas approved in advance, FEMA's practice of informal

autonomy resulted in its setting aside bureaucratic hurdles to do what needed to be done. This included performing other non-assigned tasks, as long as these were not restricted or prohibited.

In Germany, a survey of 122 federal agencies showed that overall agencies perceived that they had a lot of bureaucratic discretion, particularly with regard to implementation autonomy. Where agencies felt substantial constraints was with regard to administrative decisions (financial and human resources management) caused by budgetary law and public service regulations. Agencies were therefore generally more autonomous regarding policy implementation (outputs) compared to administrative processes (inputs and throughputs) (Bach and Jann, 2010).

## **2.7 CONCLUSION**

This chapter focused on administrative decentralisation and autonomisation as part of the new public management approach to public sector reform. Presented were pertinent theoretical models that help us to understand the dilemmas inherent in public sector hierarchical relationships and the issues which need to be confronted.

Structural and operational changes undertaken in the interest of efficiency and quality service delivery, coupled with the need to maintain political accountability create a dilemma for policymakers, the manner of resolve resulting in autonomy and control simultaneously co-existing within a single administrative space. A crucial question which one might ask therefore, to what extent is it possible to achieve a plus sum game? Is autonomy real and substantial, or is it merely superficial and rhetorical?

Empirical evidence show that whilst in some cases it has been possible to find balance between what might appear to be two mutually exclusive variables, in others the feat is one not so easily accomplished. What of the case of fiscal administrative reforms within revenue agencies? The research makes use of a few analytical frameworks to explore a number of the issues highlighted in the chapter, including the nature and extent of factual autonomy, the relative importance of the various dimensions of autonomy being exercised in practice, as well as the amount of leverage achieved through practice of informal autonomy. Conclusions can then be drawn on the extent to which these two maxims are able to sit side by side within the context of revenue administration.

## CHAPTER 3

### INFLUENCES ON BUREAUCRATIC AUTONOMY

#### 3.1 INTRODUCTION

Chapter 2 highlighted the so-called 'paradox of managerialism' - the inherent tension between delegation and control resulting, in some cases, in a rhetoric of administrative discretion and a reality of limited autonomy. If we assume, and both the theoretical literature and empirical evidence presented so far makes this assumption plausible, that actual autonomy does not necessarily equate with formally delegated powers, then the interesting question centres around this disconnect between *de jure* and *de facto* autonomy. Empirical research would provide a set of variables that help to explain why some organisations are more autonomous than others. Are differences to be explained by enterprise-specific characteristics intrinsic to an organisation, or rather on the basis of extrinsic environmental factors? Is it a case of both internal as well as external factors at play?

Various researchers argue the dangers of approaching the issue of organisational change and the impact of organisational change initiatives purely from an internal perspective (Litwak and Hylton, 1962; Friedlander and Pickle, 1968; Pfeffer and Salancik, 1978; Kotter, 1979; Grindle, 1997, Wunsch, 1999). The model of the lonely organisation that determines and implements policy in isolation is obsolete (Koppenjan and Klijn, 2004), if indeed it ever existed. Organisations do not exist in a vacuum; they are created in an institutional order that is already in place (Hall and

Taylor, 1996; Yesilkagit, 2004). Their embeddedness within superordinate and ongoing systems of social relations (Granovetter 1992) means that their ability to function is affected by the broader contexts within which they operate. There is thus a need to look outside the box, beyond organisational boundaries to analyse important contextual factors.

Any analysis of change, such as structural disaggregation and autonomisation, must therefore take account of the environment of the organisation by including as part of its focus various contextual and institutional factors. This study will therefore adopt an institutional approach to the subject of influences on the practice of bureaucratic autonomy, drawing on both resource dependency theory and institutional theory. An institutional analysis lends itself well to capturing the dynamics of politico-administrative relationships. The rationale for combining two different theories stems from this author's agreement with the argument that organisational phenomena is far too complex to be described adequately by any single theoretical approach, and that current studies on organisation stand to benefit from a combination of perspectives that provide more complete explanations of the behaviours under study (Tolbert, 1985).

The remainder of this chapter reviews the literature on these issues.

### **3.2 CONCEPTUALISING ENVIRONMENTS**

During late 1970s, a revolutionary change occurred in thinking about organisations. The traditional closed system model regarded the organisation as 'sufficiently independent to allow most of its problems to be analysed with reference to its



internal structure and without reference to its external environment' (Emery and Trist 1981:322-323). Open systems thinking directs our attention to the fact that all organisations are incomplete and depend on a throughput of resources from the external environment as a condition for system survival. The relation between organisations and their environments is part of a well-established literature on inter-organisational analysis and inter-governmental relations (Lawrence and Lorsch, 1967; Aldrich and Pfeffer, 1976; Aldrich, 1979; Pfeffer and Salancik, 1978; Rhodes, 1988, 1999; Meyer and Scott, 1983).

Several early models were developed to specify the boundaries of organisational environments. In one conceptualisation known as 'the organisational set' (Evan, 1966; Thompson, 1967; Pfeffer and Salancik, 1978), the environment is viewed in terms of other organisations with which the organisation engages in direct exchange relations. The organisation that is the point of reference is the focal organisation. The resource dependence model is commonly used to describe the nature of exchanges within this unit of analysis. In another form of delineation, 'the inter-organisational field' (Warren, 1967; Turk, 1970) consists of an aggregate of organisations forming networks of relations. The model focuses on horizontal linkages that arise among a diverse set of organisations sharing a common geographical locality such as a metropolitan area or an urban community. Propositions from exchange theory and network theory are commonly employed when focusing on this level of analysis.

Later models have also emerged to define the boundaries of environments (see e.g. Di Maggio and Powel, 1983; Scott and Meyer, 1991). The 'organisational field' of DiMaggio and Powel (ibid:148), for example, includes 'those organisations that, in

the aggregate, constitute a recognised area of institutional life: key suppliers, resource and product consumers, regulatory agencies, and other organisations that produce similar services or products’.

Proceeding past the definitional boundaries of an organisation, researchers also sought to develop concepts which capture the ways in which the environment impacts on the different facets of organisational functioning. One dimension, the technical environment or task network (Dess and Beard, 1984; Grindle and Hilderbrand, 1995; Larbi, 2005), focusing at the meso-level of organisational functioning, encompasses those issues and actors involved in the completion of organisational tasks. A second dimension, the institutional environment (Rowan, 1982; Tolbert, 1985; Carroll and Huo, 1986; Scott, 2003), focused at the macro level of organisational functioning, involves strategic issues largely unrelated to task completion and task performance.

The following sections review the literature on the technical and institutional environments of organisations and the theories related to these concepts.

### **3.3 THE TASK NETWORK (TECHNICAL ENVIRONMENT) AND RESOURCE DEPENDENCY THEORY**

The concept of a task environment, used to describe factors directly related to the work of the organisation was defined by Dill (1958:410) in his seminal article as ‘that part of the total environment ...potentially relevant to goal setting and goal attainment’. Special emphasis is placed on variables characterising elements or dimensions of the input and output streams of the work flow process.

Within empirical research, the task environment (Grindle and Hilderbrand, 1995; Larbi, 2005) is conceptualised from the perspective of a focal organisation, focusing on those organisations which make a difference to the organisation in question. In his study of environmental influences on two Norwegian business firms, Dill (1958) described the task environment of the organisations as comprising four major elements: customers (both distributors and users), suppliers (of materials, labour, equipment, capital, and work space), competitors (for both markets and resources) and regulatory groups (government agencies, unions, and inter-firm associations). The task environment itself was treated as the flow of information perceived by organisational members.

No two task environments are identical. Factors such as the requirements of the technology, the boundaries of the domain, and the composition of the larger environment, are all important in determining which individuals or which aggregate of organisations constitute the task environment for a particular organisation (Thompson (1967). Thompson further argues that the task environments of complex organisations are usually multifaceted and pluralistic. Pluralism arises because several kinds of inputs required for task completion come under the jurisdiction of different state agencies, and from the fact that there exist alternative places for output disposal. As a consequence, such organisations are involved in exchanges with not one, but several elements within its task environment.

Concepts similar to 'task environment' have been used to describe this dimension of the organisation's environment. Distinguishing between technical and institutional environments, Scott and Meyer (1991) argue that some organisations depend more

on achieving high standards of efficient internal production than meeting external standards. The environment of such organisations, which are viewed primarily as technical production systems, includes various material resource-based features such as sources of information and stocks of resources needed for task completion.

Focusing on the technical or task environment and linked to this notion of the criticality of inputs into the production function, the resource dependency model (Levine and White, 1961; Thompson, 1967; Aldrich 1976, 1979; Pfeffer and Salancik 1978; Salancik, 1979) explains organisational behaviour in situations of dependency and the exchange of scarce resources. The model proceeds from the premise that increased differentiation and specialisation has lessened the possibility of organisational self-sufficiency and increased inter-organisational dependencies. Rhodes (1988) argues that governments are more and more confronted with tasks where both the problems and their solutions tend to cut across boundaries of separate authorities and functional jurisdictions. Organisations become dependent upon each other because their paradigms are connected in some way - dependence growing out of domain intersection. Given this state of interconnectedness and dependency, organisations are therefore forced to enter into transactions and relations with other elements in the environment to supply necessary resources. The organisation's primary function establishes its need for exchange elements, as well as its capacity to make certain kinds of elements available to other organisations.

The fact that organisations are dependent on their environment is not in itself the problem (Pfeffer and Salancik, 1978). Were all essential elements in infinite supply and continually available, there would be no cause for concern. The problem

emerges from the uncertainty and unpredictability of the environment, caused by multiple and competing demands on scarce and valuable resources.

The nature of the resources required by organisations are variously described in the literature. For Benson (1975), two basic types of resource, money and authority, are central to organisational functioning. Money is important for running programmes, the recruitment and retention of personnel and the purchase of capital equipment. Authority refers to the legitimisation of activities, and the right and responsibility to carry out various programmes. Given money and authority, other needed commodities can be acquired. Rhodes (1999) suggests a more differentiated list of five types of resource underpinning central-local government interactions – constitutional legal resources (powers allocated by statute and constitutional convention), financial resources, political resources (access to decision making in other government units), informational resources (information and expertise possessed by actors), and hierarchical resources (the authority to issue commands and to require compliance). Gill (2003) advances a similar list. The resources of an organisation include capital, people, infrastructure, technology, information, legal authority and goodwill. The actors who mediate these resources make up the 'ecological niche' surrounding the organisation (Jacobs 1974: 46), which has been collectively referred to as the organisation's 'enabling system' (Mascarenhas, 1972:66).

No two firms will have the exact same pattern of resource flows (Scott, 1991). Dependency is not necessarily symmetrical or unidirectional. The reciprocal nature of dependence is reflected in resource elements flowing from one organisation to another, in exchange for other resources. Scharpf (1978) argues that in the real

world, unilateral dependence may be less frequent, and mutual dependence more the case, than an inspection of formal hierarchical authority or even of material resource flows might suggest.

Thompson (1967:30) argued that 'an organisation is dependent on some element of its task environment 1) in proportion to the organisation's need for resources or performance which that element can provide, and 2) in inverse proportion to the ability of other elements to provide the same resources or performance. Based on these definitions, we can establish those factors which determine the degree of dependence or vulnerability of an organisation. These include the discretion over resource allocation and use by another actor; the importance of the resource (its criticality to input or output flows, its substitutability, as well as the magnitude of the exchange); the concentration of the resource control (the availability of alternate suppliers plus the cost of switching); as well as the level of resource dependence in the other direction (Pfeffer and Salancik, 1978). These factors together determine the dependence of an organisation on any given group or organisation.

### **3.4 THE INSTITUTIONAL ENVIRONMENT AND INSTITUTIONAL THEORY**

Up to the mid-1970s the task network or technical environment continued to command the attention of researchers. Recognition that organisations were not just technical but also political, social and cultural systems called attention to the importance of the institutional environment of organisations (Scott 2003).

According to North (1990), institutions are human devised constraints, rules of the game, that structure political, economic and social interaction. They consist of both

formal constraints (constitutions, laws, rules), informal constraints (norms of behaviour, conventions, self-imposed codes of conduct), and their enforcement characteristics. The concept of the institutional environment refers to those institutional elements which invariably, come from outside of the organisation, and which usually causes change within the organisation. Zucker (1987) argues that positions, policies, programmes, and procedures of modern organisations are manifestations of powerful institutional rules. Organisations become a passive “audience” for institutional knowledge, ‘because the rules are formed in the state or even world system, external and hierarchically superior to the organisation’ (ibid:450). Much broader in scope therefore than the technical environment, the institutional environment articulates the whole organisation in the broader society (Hannan and Freeman, 1984). Institutional environments can therefore constrain or facilitate the accomplishment of particular tasks (Grindle and Hilderbrand, 1995).

Scott (1991) warns of the dangers of viewing technical and institutional environments as dichotomous alternatives. The distinction, he argues, is at best analytic, and at worst misleading. Institutional features shape and frame several aspects of technical components. Although technical forces were the obvious focus of attention in earlier periods, it is not the case that such forces have given way to institutional forces. Both institutional and technical forces appear across contemporary organisational domains (Scott, 2003). All organisations, to one degree or another, are embedded within both relational and institutional context. Thus we can conceive of a continuum along which organisations can be ordered (Meyer and Rowan, 1977).

Scott (1992) cross-classified the two dimensions, technical and institutional, according to the strength and weakness of each environment, and provided illustrations of types of organisations according to the varying degrees of technical and institutional controls. Figure 3.1 is an adapted version of Scott's classification. Most manufacturing and other commercial organisations operate in environments characterised by strong technical but weak institutional controls. Whilst they confront pressures such as health and safety requirements and other regulatory controls, the majority of pressures stem from the need to compete effectively on the basis of criteria such as price and quality. General hospitals operate within both strong technical and institutional environments, having to respond to demands for cost containment, improved outputs and outcomes, along with strong institutional pressures from outside professional bodies.

		Institutional Controls	
		Stronger	Weaker
Technical Controls	Stronger	Utilities Banks General Hospitals Revenue Authorities	General Manufacturing Pharmaceuticals
	Weaker	Mental health clinics Schools; Legal Agencies Churches	Restaurants Health Clubs Child Care

Figure 3.1: Classifying Organisations according to Environments

Source: Adapted from Scott 1992:133

Schools systems operate in weaker technical but stronger institutional environments because of their sensitivity to normative standards developed externally (Meyer and Rowan 1977, Rowan 1982). However, given the more recent developments within the education sector, this characterisation of schools is seen as no longer accurate



(Kelly, 1998). Kelly argues that an evolutionary metamorphosis is taking place within school systems as a result of public demands for schools to be more technically productive and more accountable. Technical productivity is assessed based on outputs of student learning and competitive student success

This author posits that revenue authorities operate within both strong technical and institutional environments. As organisations which combine complex technologies with a strong public good component (revenue collection and law enforcement), these organisations face demands to collect government duties and taxes efficiently and effectively, and at the same time are subject to a range of normative pressures from external referents or stakeholders (A fuller description of such pressures is provided at Section 3.8). Figure 3.1 was therefore modified to show where the revenue authority is felt to be situated within this classification scheme.

Attending to deeper and more resilient aspects of social structure, institutional theoretical claims therefore emphasise the point that something identified at a higher level is used to explain processes and outcomes at a lower level of analysis (Amenta and Ramsay, 2010). Institutional theories, despite differing focal areas, seek to provide answers not only to questions of how and why institutions originate, but equally important how they persist, change or perish over time.

### **3.5 THE ORGANISATION'S INTERNAL ENVIRONMENT**

Whilst both technical and institutional environments have been shown as important issues for consideration in analyses of organisational functioning, this author proposes another dimension of environment – the internal organisational

environment – as likewise worthy of examination. The importance of organisational factors and their influence on bureaucratic autonomy cannot be denied. Internal factors were found to be the most important of all the hypothesized variables as the main source of subsidiary strength in a study of Danish foreign-owned companies (Forsgren et al, 1999). Figure 3.2 provides some indication of the environment of the organisation as defined.

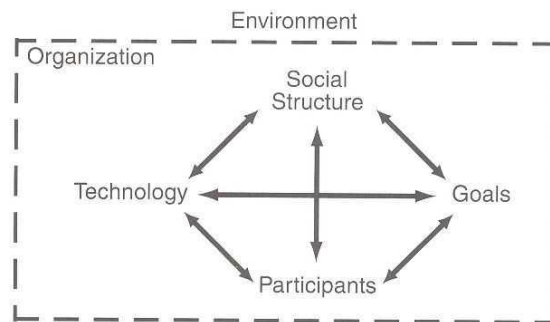


Figure 3.2: The Internal Organisational Environment

Source: Scott 1992:16

Included within the organisational environment are factors such as the social structure or aspects of the relationships that exist between individuals as participants within the organisation, organisational goals as well as the technologies used for the completion of organisational tasks. This dimension, along with the technical and institutional environments all create a unified environmental system within which the organisation operates. Figure 3.3 is the author's conceptualisation of this environment as explained. To briefly summarise, at the centre is the internal environment of the organisation incorporating a set of elements such as its structures and systems, resource availability, as well as knowledge and expertise which result in its overall internal capacity. Immediately surrounding this core is the task network or technical environment where resource dependency plays a critical

role. These two sub-elements are immersed within a broader institutional environment, which includes factors both at the national and supranational levels.

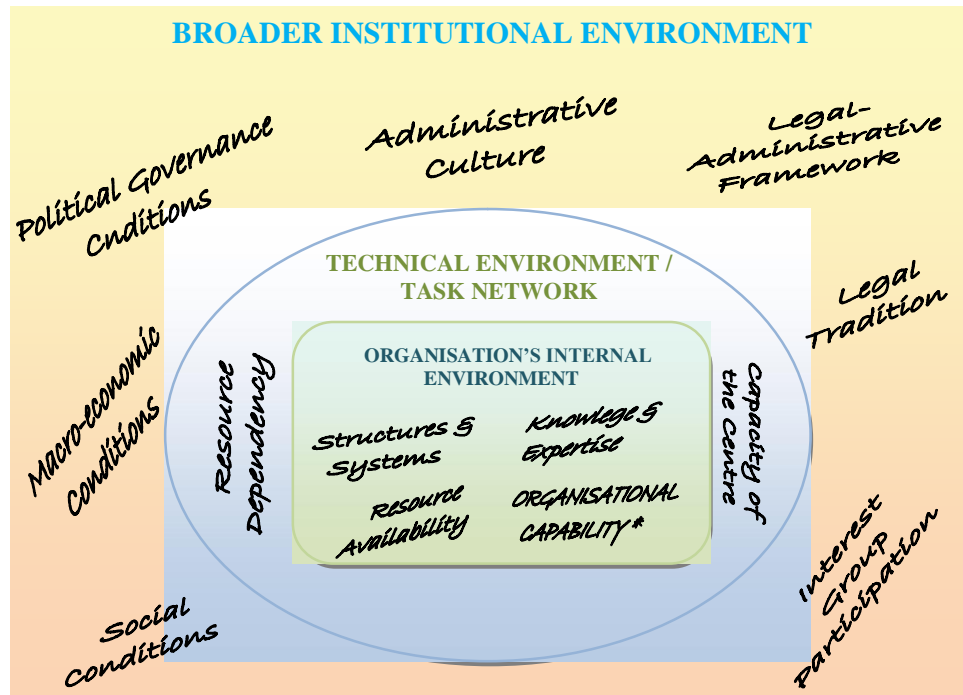


Figure 3.3: The Institutional Environment of the Organisation

Having reviewed the literature, and presented the arguments, the relevant research questions posed at the end of Chapter 1 can again be restated:

**RQ<sub>1</sub>: What are the factors that condition<sup>15</sup> levels of bureaucratic autonomy?**

Based on the arguments presented, the following hypothesis is advanced:

**H<sub>1</sub>: Factors within the agency's broader institutional environment are more likely to condition levels of autonomy than factors within its internal or task network environments.**

<sup>15</sup> The term 'condition' is used to connote the potential for a factor to act as a constraint or as an opportunity for action in the exercise of bureaucratic discretion.

\* Internal factors bundle to collectively give the organisation its source of strength or overall capability.

Focusing on each of these environments in turn – technical, institutional and internal – the remainder of this chapter presents those conditioning factors to be investigated as part of the study. The factors which have been selected as relevant to this study and discussed in the following three sections have been gleaned from a wide and varied literature (Mascarenhas, 1972; Pfeffer and Salancik, 1978; Sexty, 1980; Rourke, 1984; Lioukas et al, 1993; Ziegele, 1998; Larbi, 2005; Christensen, 1999; Taggart and Hood, 1999; Carpenter, 2001; Gill, 2003; Ordorika, 2003; Pollitt et al, 2004; Cribb and Gewirtz, 2007; d’Almeida and Klinger, 2008; Bach and Jann, 2010; Carboni, 2010).

### **3.6     CONDITIONING FACTORS WITHIN THE INTERNAL ORGANISATIONAL ENVIRONMENT**

Limitations on bureaucratic autonomy stem from factors related to the way in which organisations operate and bureaucrats behave within their own habitat (Rourke, 1984). Several factors exist within the internal life of the bureaucracy itself which have the potential to impact on levels of autonomy. This section examines some of those factors, namely the organisation’s structures and processes and its control over resources.

#### **3.6.1   STRUCTURES & SYSTEMS**

Managing a performance-based contract system is very different from managing a more traditional authority-based system (Kettl, 1997). Operating within a decentralised environment with delegated roles and responsibilities, organisations must therefore have in place proper structures and systems to enable it to function as an autonomous unit. Larbi (1998a) emphasises the importance of planning,

budgeting, management, and administrative systems. These will include, for example, strategic planning and strategic management systems, financial information and control systems, as well as systems for measuring, monitoring and evaluating performance. There will also be a need for appropriate technologies to support the functioning of the various systems. Failure to demonstrate capacity in crucial areas of the organisation's functioning may result in external attempts at control and a subsequent loss of organisational autonomy.

At the level of the organisation is the required capacity for undertaking new roles such as financial management (including procurement, contract management and asset management), human resources management, as well as performance management. The weak capacity for financial management and accountability was shown to exist within decentralised units such as the teaching hospitals in the Ghana health system (Larbi, 1998b).

### **3.6.2 CONTROL OVER RESOURCES**

The capacity of an organisation to act autonomously is partly a function of the degree of immediate control over its resources. The availability, adequacy, timeliness and continuity of resource flows will allow for organisational flexibility to actually use its powers of discretion.

Carruthers (1994) argues that insofar as an organisation depends on a single uncertain source for critical resources, it lacks autonomy and its actions can be constrained. Conversely, if direct control over critical resources is established, an organisation can increase its autonomy. Hence, where decentralised units are

forced to rely on government funds, either through direct payments (parliamentary appropriations using the public expenditure management and budget decision process of government), or through subsidisation, there is a reduced likelihood of organisational independence. Conversely, organisations that operate on user fees, or money from trust funds may enjoy greater freedom than those organisations which operate through government funding. The same argument may hold for organisations, such as public corporations, which have authority to raise financial resources, or to borrow on the financial market without the need for government guarantees. Proponents of percentage-of-collection funding for revenue authorities argue that such methods of financing insulate the authorities from the vagaries of a sub-optimal budgeting process, wherever such inefficiencies exist (Gill, 2003). Rourke (1984) sums up the argument nicely. No matter how broad an agency's formal authority, its real power ultimately turns on its fiscal resources. The range of services any agency can provide is ultimately determined by the money which it is allocated and authorised to spend.

Where organisations have a greater degree of control over their HR regime (establishment of posts, staffing, pay and grading, promotions and dismissals), their dependence on other central co-ordinating agencies will be reduced and their powers to accomplish identified goals greatly enhanced. Not only does direct control over resources increase the potential for bureaucratic autonomy, organisations will be even less constrained where they have the authority to reconfigure resources as appropriate, for example by altering the resource mix in response to emerging priorities.

### **3.6.3 ORGANISATIONAL CAPACITY**

Factors such as efficient and effective internal structures and processes, power over resource acquisition and resource allocation, all provide the organisation with an overall internal capacity to function autonomously. Forsgren et al (1999) argue that such productive bundles of routines of a highly tacit and social nature can be labelled organisational capabilities and serve as sources of organisational strength. Within a public sector setting, such capabilities may be a source of bureaucratic strength as well as an explanatory variable which explains relative levels of bureaucratic autonomy.

## **3.7 CONDITIONING FACTORS WITHIN THE TASK NETWORK (TECHNICAL) ENVIRONMENT**

This section discusses factors within the task network or technical environment of the focal organisations which may serve to condition the practice of autonomy.

### **3.7.1 RESOURCE DEPENDENCE**

Decentralised units depend on other actors within the task network or enabling environment for resources (revenue, staff appointments, political legitimacy) to facilitate task accomplishment. Without access to adequate and continuous resources agencies will find it difficult to accomplish organisational objectives. Section 3.3 examined the linkages between power, dependence and resource flows. Insofar as the organisation depends on a single uncertain source within the technical environment for critical and non-substitutable resources, its powers of self-determination can be constrained depending on the behaviours of the source(s) of resource flows.

Various researchers have written about the common fate of the focal organisation in the face of financial dependence. Wunsch (2001:279) refers to the 'repetitive budgeting game', a strategy pursued by the national Ministry of Finance and Treasury in most less developed countries in order to keep control of spending. The process is characterised by repeated approval of expenditures, arbitrary denial of access to already authorised and approved funds, as well as delays in the release of funding. Such practices impact negatively on the capacity of the focal organisation to act. Public expenditure management systems within the Caribbean region are projected in the same light, typified by erratic and uncertain resource flows (World Bank, 1996). Despite the amounts agreed for spending in annual estimates of expenditure, actual spending patterns fail to match negotiated amounts. Likewise, in Africa and Latin America, more often than not, semi-autonomous revenue authorities receive less than the due statutory funding level (Taliercio, 2004).

Section 3.3 also highlighted the danger of examining the power-dependence relationship from the viewpoint solely of the focal organisation. Rhodes (1988), writing on central-local government relations, advances a valid argument on the issue of dependence which is equally applicable to centre-peripheral relations within decentralised arrangements. The centre has a monopoly of legal resources and, if not a monopoly, then the preponderant share of financial and political resources. The non-financial controls of the centre include direction, as well as inspection and political controls over the way sub-central government conducts its affairs.

In some instances, instead of a relationship with 'the government' as a single unified entity, 'the principal' becomes fragmented and the organisation is confronted with a



diverse set of influences. Splitting authority among several principals is of little consequence if the principals' objectives are all aligned (Aghion and Tirole, 1997). However, this is often not the case, as multiple principals, many if not all with claims of political legitimacy (Waterman and Meier, 1998), compete to extend their area of influence into the workings of the organisation (Mascarenhas, 1972). For the Finance Ministry and the Treasury, as key actors in the macro management of the economy, major concerns will centre on the scarcity of government resources, their allocation and the monitoring of their use. Some decentralised organisations may be able to mitigate network difficulties and shield themselves from interventions by these various central principals (Larbi, 2005). Agency autonomy may therefore be enhanced or reduced by the multiplicity of principals.

### **3.7.2 CAPACITY OF THE CENTRE**

Certain behavioural and psychological conditions are needed to support successful decentralisation (Rondinelli, 1981). The ability of agencies to function as semi-autonomous bodies will involve parent departments and central agencies undertaking new roles and their building the necessary capacities to fill such roles. Adoption of the New Public Management approach would involve a shift away from attitudes and behaviours that are centrist, control-oriented and paternalistic, towards those that support and facilitate the exercise of administrative discretion. Whilst vertical control linkages will include mechanisms for regulating and monitoring, support linkages will focus on the provision of necessary planning, programming, logistical, personnel and budget resources needed by the decentralised units.

Reorientation into these more supportive roles requires the building of necessary capacities to fill these roles. As a 'parent' to a new agency, a ministry needs to possess certain capacities and to use those capacities to take certain specific actions (Pollitt, 2002: 15). Larbi (1998b) identifies some of these capacities required by parent departments, namely the capacity to manage central support services, the capacity for resource allocation, as well as the capacity to develop performance agreements and monitoring systems.

Changes in attitudes and behaviours on the part of central government officials can sometimes, however, be difficult to achieve. Where administrative linkages do exist, they tend to be predominantly top-down control processes rather than channels of mutually beneficial, co-operative and reciprocal interaction (Rondinelli, 1981). The inadequacy of public expenditure management systems in many countries and the impact of lack of stable resource flows on the autonomous functioning of the bureaucracy is repeatedly highlighted (Taliercio, 2004a; Gill, 2000). Metcalfe and Richards (1998) comment on the behaviours of parent departments. Too many resources which should be at the disposal of line management have been deployed by the centre to monitor departmental compliance with centrally defined standards. Dominated by its need to control inputs, the Treasury is criticised for concerning itself with too many aspects of agency operations, 'inhibiting their freedom of action and spirit of enterprise' (Pliatzsky, 1992:562). What is therefore required of central actors is the development of an enabling technical environment that allows managers the actual freedom to manage by making full use of their formal autonomous powers (Batley and Larbi, 2004).

### **3.8     CONDITIONING FACTORS WITHIN THE INSTITUTIONAL ENVIRONMENT**

This section focuses on factors at both the national and international levels within the broader institutional environment which serve as potential opportunities or constraints for the exercise of bureaucratic discretion. Examined are the factors of interest group participation, the legal-administrative framework, legal tradition, and system of government. The comparatively more detailed treatment of the latter two factors serves to lay the groundwork for an ensuing analysis that is intended to advance current knowledge on two areas that are currently under-researched in current discourse on bureaucratic autonomy.

#### **3.8.1   INTEREST GROUP PARTICIPATION**

The actions of government bureaucracies usually affect several people who, as principals, are in a position to influence the organisation. Many external constituents have genuine interests in the functioning of the organisation and will attempt to advocate, and if possible, impose their own effectiveness criteria on the organisation (Scott, 2003).

Various researchers have examined the influences of specific interest groups on a government bureau's exercise of autonomy. Labour unions are important actors for many public bureaucracies. By demanding better terms and conditions, including job security, generous wages and fringe benefits, unions have the potential to influence organisational inputs as well as methods of operation. Strong, hostile, change-resistant unions can cause serious disruptions in agency operations through their

interference in operational human resource issues and their attempts to block institutional strengthening initiatives which involves computerisation (Gill, 2000).

The role of donors and their involvement in reform initiatives is an issue often highlighted for the pressures which they exert in the furtherance of their interests. Whilst international linkages through donor assistance can serve as a resource (Egeberg, 1998), they may also act as constraints on organisational functioning. Corkery et al (1998) note the marked difference between the role of donor agencies in developing agencies and that which they play in developed countries. In the latter, external actors are generally invited in by governments as consultants or advisers, and government reserves the right to accept or reject their recommendations. In developing countries, however, their financing of reform programmes often gives them 'a strong influence on the internal process of change and weakens the power of the local managing agency to determine the course and pace of the reform programme' (ibid: 19). Similarly the argument of Fjeldstad (2005:16) on the issue of donor-supported tax administrative reform programmes:

"The power of the purse, added with quite definite ideas regarding what sort of institutional reforms are desirable, has led donor agencies to take the centre stage in the tax administrative reforms in a number of the poorest countries. In theory, donors respond to needs identified by client governments, but in practice they often identify client needs for them. This was the case when the Uganda Revenue Authority (URA) was set up by external consultants who arrived with a pre-fabricated 'blue-print' for tax administrative reforms."

Egeberg (1998) argues that the actual amount of bureaucratic autonomy may depend on the nature and extent of corporatist arrangements and the degree to which interest groups are accepted as legitimate participants in the policy process.

In Norway, up to around 1980, the collegial system of governance resulted in high levels of involvement of interest groups in collegial committees. During the 1980s, corporatism was to come under pressure as non-socialist governments, influenced by New Public Management ideas and neo-liberalism, became highly critical about the role of interest organisations in public policy-making, largely because of their contribution to public expenditure growth. In terms of the influence of interest groups, Egeberg's research findings showed that during the period 1976-1996, though the views of civil servant unions were not generally considered in areas such as planning, budgeting, or co-ordination, a large proportion of central administrators considered unions to be important when decisions were being made on personnel and organisational issues. Of greater importance was the significant increase in the importance attached to the views of international actors. In fact, with regard to the drafting of new legislation, the international environments, in addition to the political leadership, imposed the most salient constraints on bureaucratic action.

Dealing with multiple principals and the attempts of various interest groups trying to influence the functioning of the organisation, managers will be faced with the task of insulating the bureaucracy from these external interests in order to safeguard its level of autonomy.

### **3.8.2 LEGAL-ADMINISTRATIVE FRAMEWORK**

Despite their structural autonomy, semi-autonomous bodies may function as part of the wider public sector. General public service rules and practices relating to planning, budgeting, financial management and accountability are likely to be followed by these entities. These rules are the 'property' (Talbot 2002:30) of several

actors or central control agencies, including parliaments, supreme audit bodies, personnel regulatory bodies (such as Public Service Commissions) as well as government itself (for example the Treasury and Finance Ministries).

The World Bank (1996) outlines traditional arrangements within Commonwealth Caribbean countries, whereby the Constitutions of these countries establish the framework for public financial management. Responsibility and accountability for the preparation and macro management of the national budget are placed with the minister of finance. In principle, the regular reports of the Accountant General, combined with the independent evaluations of the Auditor-General, and the oversight of the parliamentary Finance or Accounts Committees could form a powerful force for scrutinising and controlling government spending. Constitutions also make provision for at least one Public Service Commission (PSC), though some countries also have separate Commissions for the police, educational, or judicial service. The nature and functioning of the various rules as vested within the different central authorities have implications for the exercise of autonomy.

Laws and regulations can also act as potential straitjackets (Blau, 1970) for semi-autonomous organisations. Central controls over finance and human resource (HR) matters may result in organisations being constrained in their ability to procure goods and services, to manage finances, to recruit qualified people for critical positions and to pay adequate salaries, to adjust HR complements to emerging needs and to discipline or dismiss staff. Public service legal provisions and governance frameworks were found to have had a negative impact on the

operational autonomy of the teaching hospitals in Ghana and the Ghana Water and Sewerage Corporation (Larbi, 1998a; 1998b).

Gill (2003) highlights the special case of revenue authorities (RAs) which are not only affected by wider public service regulations, but also by wider non-tax laws within respective national legal systems. Banking laws often prohibit the RA from collecting information about financial transactions that may contain evidence of tax evasion.

In addition to non-tax laws is the incidence of supranational legislation superimposed on top of national laws. Djelic and Quack (2007:180) make reference to national systems which, due to their openness, are increasingly nested within higher order transnational institutional frameworks, with transnational rule-setting bodies and transnational rulemaking 'shaking and shaping national institutional trajectories'. National decisions to enter into various agreements or to adhere to certain standards might therefore also have implications for autonomous bureaucratic functioning.

The above arguments serve to show that within the wider public sector legal/administrative framework, the effectiveness of laws and regulations in terms of their clarity in defining roles and facilitating action, as well as their congruence with other systems, will affect organisations in their exercise of administrative discretion. Not only is it a case of abiding by a set of externally imposed controls; also at issue are the consequences of operating within an environment characterised by multiple and potentially opposing principals.

### 3.8.3 LEGAL TRADITION

In every established legal system, the legal past is central to the legal present. Just as biological and social processes are constrained by history, the fact that law takes different forms and plays different roles across different jurisdictions is largely explained by its origin in different legal families or legal traditions (La Porta et al 1998; Hathaway, 2003). By adding the force of obligation to particular primary rules of conduct, traditions may have permanent effects on the rules of the game (Chong and Zanforlin, 2000), thereby shaping the aims, measures, interpretations and outcomes of public sector reform (Rhodes, 1999). Such arguments suggest that a true understanding of the law and its effect on bureaucratic functioning and bureaucratic autonomy requires a focus not only on the ‘time free’ staples of modern jurisprudence’ (Krygier 1986: 239), where the law is viewed solely in terms of specific legal outcomes, but also on legal tradition and how this influences law as a process or activity.

The issue of legal tradition is often researched from a macro perspective, within the field of comparative institutional economics. Current studies focus primarily on the impact of legal tradition on economic development; investigating the relationship between law, financial development and economic growth<sup>16</sup>. No research to date, at least of which this author is aware, attempts to empirically test at the meso or micro levels the impact of legal traditions on bureaucratic functioning and bureaucratic autonomy.

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<sup>16</sup> See for example, La Porta et al. 1998, 1999; Chong and Zanforlin, 2000; Beck et al, 2001; Glaeser and Shleifer, 2002; Ogus, 2004; Hadfield, 2006).



Merryman (1985:2) makes a distinction between a legal system and a legal tradition. Whereas the former comprises an operating set of legal institutions, procedures and rules, the latter he defines as:

“...a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in society and the polity, about the proper organization and operation of a legal system, and about the way law is or should be made, applied, studied, perfected and taught.”

Legal traditions of the world have been classified into three main families, the two major being the Romano-Germanic civil law (or civilian) tradition<sup>17</sup>, and the common law tradition. Analyses of the salient differences between these two families commonly make use of criteria such as historical origins, the hierarchical source of law and treatment of legal materials, legal ideology or philosophy, institutional arrangements, legal drafting style, as well as methods of legal reasoning or interpretation. After briefly describing the origin and source of law of these traditions, the section discusses in greater detail the two areas of legal drafting style, and statutory interpretation (part of the wider function of legal reasoning).

These two areas have been singled out for discussion and subsequent empirical testing largely because of theoretical arguments which link administrative functioning and administrative discretion to factors such as the process of rulemaking (OMB Watch, 2009) and the manner of interpretation of legislation ((Vanistendael, 1996; Lonquist, 2003). In addition, such factors are relatively more amenable to objective data collection than ideological or philosophical factors.

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<sup>17</sup> Even within the Romano-Germanic tradition, scholars distinguish between the French, German and Nordic (Scandinavian) civil law traditions.

Before such discussion however, Table 3.1 is used to provide a preview of the major differences under the specified categories.

Characteristic	Civil Law	Common Law
Origin of the Law	Civil Juris	English Common Law
Hierarchical Source of Law	Codes at the apex - precedents of less importance	Precedents at the apex, plus doctrine of <i>stare decisis</i>
Legal Philosophy	Supremacy of the State	Focus on individual rights
Legal Drafting	'Fuzzy' law (Broad legal principles establishing the basic framework)	'Fussy' Law (Precise details; enumeration of specific applications/exceptions)
Legal Reasoning/Legal Interpretation	Purposive approach to interpretation; focus on legislative intent/social or economic objectives	Adherence to literalism; strict/grammatical approach to interpretation

Table 3.1: Summary of Key Distinguishing Characteristics and Differences between the Civil and Common Law

Source: Adapted from Lee 2005: 240

### 3.8.3.1 Origin and Uptake of the Law

Civil or Romano-Germanic law derives from ancient Roman law as codified in the *Corpus Juris Civilis*<sup>18</sup> (CJC) of the Byzantine emperor Justinian. With the expansion of the Roman Empire and the challenge of governing a diverse population, the need arose for a unification of the various far-flung territories. In the 6<sup>th</sup> century, Justinian formed a commission of jurists to compile all existing Roman law into one body that would serve to convey the historical tradition, culture and language of Roman law throughout the Empire – the result of this enterprise being the CJC.

<sup>18</sup> The *Corpus Juris Civilis*, a four-part compilation, included originally the *Digest* (writings of the classical jurists); the *Code* (early imperial legislation, including laws, decrees and pronouncements); the *Institutes* (a summary of the Digest) and later the *Novels* (Justinian's legislation).

The English common law tradition dates as far back as the 1066 Norman Conquest of England. Prior to this date, judges of the royal court travelled all over the country deciding cases which affected the Crown in accordance with the custom of the locality from whence the case emanated. Soon after the Conquest, the replacement of these local county courts with a centralised system of royal courts at Westminster resulted in the unification of English law and a centralisation of justice whereby gradually similar cases were decided in a similar way irrespective of differences between the local customs involved. The emergence of a set of legal norms (judge-made or case law based on precedents) applicable to all parts of the country helped lay the foundations for a new comprehensive jurisprudence that replaced the old patchwork feudal law of local areas, giving birth to the common law system.

Both traditions have spread throughout the world primarily through conquest or colonisation, but also as a result of borrowing or more subtle imitation. Civil law, the more widely distributed of the two, is the dominant tradition in most of Western Europe. Through colonisation, French civil law was exported to northern and Sub-Saharan Africa, parts of the near East, Indochina, French Guiana, and the French Caribbean Islands. Apart from colonisation, several major jurisdictions, notably China, Japan, South Korea, and Thailand, “where the need for modernisation or the desire to westernise has led to the penetration of European ideas” (David and Brierley, 1985:73), have adopted systems based either purely or predominantly on civil law. Even in some discrete areas of the common law world, for example, Louisiana, Quebec and Puerto Rico, the civil law tradition is practised. English common law was initially transplanted from England to many countries around the world as a result of colonisation and the dominance of the British Empire during vital

periods in world history. Such colonies included the U.S., Canada, Australia, India, New Zealand, various countries in Africa, as well as Asia.

### 3.8.3.2 Source of Law

In common law countries, case law, a body of principles derived from court decisions regulated by the doctrine of precedent (*stare decisis*), is traditionally considered to be the primary source of law. Answers to legal problems are not only sought in reported cases analogous with the particular situation at hand, but also the rule of *stare decisis* compels that the decisions of higher courts are legally binding on all inferior courts within the same jurisdiction. According to classic theory, secondary sources of common law are legislation and custom. Despite such theory, however, Sauveplanne (1982:22) argues that statutory law<sup>19</sup>, by acquiring in more recent times “the function of stating the aims and objectives of social and economic policy and organising their implementation” has, to a considerable extent, penetrated several areas in systems based upon judge-made law.

In civil law systems, legislative enactments are the primary<sup>20</sup> sources of law, particularly Civil Codes governing mainly areas of private law and Statutes predominately governing public matters. It is primarily on the provisions embodied within these enactments from which solutions in particular cases are derived and on which the courts base their judgements. Theoretically, jurisprudence plays only a minor role within the civilian tradition, as there exists no legal doctrine or principle of *stare decisis*. Whatever the similarities of fact situations, judges are not obliged to

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<sup>19</sup> Statutory law includes both Statutes or Acts of Parliament, as well as delegated or subordinate legislation, i.e. rules and regulations made in execution of legislation by different authorities.

<sup>20</sup> Legislative enactments include the Civil Codes, statutes, decrees of the Executive Power, and administrative regulations.

render decisions based on preceding cases. In actuality, however, the role and influence of judicial precedent in recent times has increased (Merryman 1985, Tetley, 99/00).

### **3.8.3.3 Legal Drafting Style**

It is possible to discern a marked difference in the style of legal drafting used within the two traditions. In civilian systems, comprehensive codes covering every area of the law and written at a high level of abstraction are complemented by statutes drafted in the form of broad or general statements of principles. Civilian practice of “fuzzy law” (Campbell, 1996:1) results in legislation that establishes the mere framework of the law, leaving details or the application of general principles to specific cases for other mechanisms such as the bureaucracy and the courts to fill in.

Common law statutes, on the other hand, tend to be much more detailed and elaborate. In common law countries where certainty and precision is prized above all else, the use of “fussy law” (ibid) results in various rules of a statute setting out lengthy enumerations of specific applications or exceptions. This incentive to micromanage policymaking via legislative statutes is said to stem from one major factor – the rule of precedent. The practice of *stare decisis* and the enlarged scope for judicial lawmaking result in great cause for fear on the part of the legislature of the enduring effect of judicial decisions on policy. The embedding of policy and administrative details in statutes is therefore aimed at tying the hands of judges by controlling judicial construction of legislative enactments (Campbell 1996; Huber and Shipan, 2002).

Whilst difference in drafting style is portrayed here as no superficial matter, it must be emphasised that such characterisations are only ideal types. Factors such as the politics and practices within a specific country (e.g. legislative attitude towards the delegation of lawmaking authority, as well as the nature of the activity and the type of people one is seeking to regulate) have given rise to variation within traditions and even across policy areas (Campbell, 1996; Thuronyi, 1996; Mikuriya, 2005). Sauveplanne (1982), for example, describes the aversion of Latin American lawmakers to legislating in broad, general terms. In situations, which in other jurisdictions would typically be left to administrators or the judiciary to work out on a case-by-case basis, legislators seemingly try to attempt to pre-regulate all possible foreseeable aspects of behaviour with detailed and comprehensive laws or decrees.

But is there one best style of legislative drafting? Campbell (1996) argues that whereas broad principles or 'fuzzy law' might be more appropriate to govern private relations where there is a high degree of trust, or where there is a clear context and a fair degree of consensus on appropriate standards of conduct, detailed 'fussy law' could be retained for fiscal and other public law statutes where it is anticipated that attempts might be made to manipulate or evade the law. And what of the implications for bureaucratic functioning? Whilst civilian 'fuzzy' provisions and abstract principles provide functionaries with a fair amount of discretion, in cases of adjudication, these said principles also provide scope for different judicial interpretations. In such instances, bureaucrats may very well emerge the losers during reviews of their administrative actions. Under 'fussy' common law, though bureaucrats have little flexibility to manoeuvre as a result of detailed legislation which directly determines or affects operational autonomy, prime advantages of

specifying in detail the legal rights and duties of citizens, factual circumstances and their legal implications, are certainty and foreseeability in the great majority of cases (Campbell, 1996). Provided that the law is clear and bureaucrats follow the letter of the law, it is hypothesised that most cases are likely to be resolved in their favour. Only in circumstances of ambiguity or absence of provisions in the law, necessitating judicial discretion and application of the doctrine of *stare decisis*, will bureaucrats in common law systems be put in the same situation as their civilian counterparts.

#### **3.8.3.4 Statutory Interpretation**

Legislation is an important source of law in both civil and common law jurisdictions. The primordial role attributed to written law (codes and statutes) in countries of the Romano-Germanic family was already highlighted. Likewise in the common law tradition, 'there are [now] vast areas of social activity for which the very principles of the legal order are to be looked for in legislation' (David and Brierley, 1985:392).

The problem with legislation is that, despite the need for laws which are clear, complete and coherent, legislative practice often falls short of this objective. According to Merryman (1985), hardly an article in a typical civil code has escaped the need for judicial interpretation to supply a meaning that was unclear to the parties, to their counsel, or to the judges themselves. So too in the common law tradition judges are not relieved by clear, complete, prescient legislation from the necessity of statutory interpretation. The question therefore, is no longer *whether* judges interpret law, but rather *how* they do so, and whether styles of statutory interpretation differ between common law and civil law countries. Even more

important, given the nature of this study, is the question as it relates to the interpretation of taxing legislation. Are tax statutes interpreted differently within the two traditions? If so, what are the implications for the bureaucracy and bureaucratic functioning?

Examining the range of options for interpreting legislation, a number of approaches are open to the judiciary. Courts may make use of ‘rules of interpretation’<sup>21</sup>, or may adopt one of two common and competing approaches - the ‘literal’ or the ‘purposive’ rules of interpretation. Whereas the literal approach seeks the intention of the legislature through an examination of the language or words according to their plain or literal meaning, the purposive approach seeks to unearth the overall result sought by the legislature. Here a distinction is made between the ‘exegetic’ method where the court examines the *travaux préparatoires* or legislative history<sup>22</sup> to discover legislative intent, and the ‘teleological’ method where the focus is not on the intention of the draftsman or the text’s historical origin, but on the social objective of the piece of legislation, in order to derive a meaning which, at the time, satisfies the then current sense of justice.

Under the common law, judges generally follow a textualist approach where the meaning of statutes is constructed in a very strict and literal way (Mechlem, 2000; Mikuriya, 2005). If the court finds a gap in the statute then recourse is taken to case law or decisions applying the provisions of the statute. In several common law

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<sup>21</sup> A rule may state, for example, that an enactment must be read as a whole, and that special provisions will control general provisions.

<sup>22</sup> In order to discover the legislative history of a law, courts make use of documents such as government’s statement of reasons for the passage of a Bill; floor debates in the Upper and Lower Houses; as well as the Reports of successive examinations of the legislation, with amendments proposed and rejected by Parliamentary Committees.



jurisdictions such as Australia and New Zealand, the literal approach has garnered widespread support in relation to all types of legislation. In Australia, one oft cited ruling in support of the literal approach is the case of *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd*<sup>23</sup> where Higgins J stated:

The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intention of Parliament that made it; and that intention has to be found by an examination of the language used in the statute as a whole. The question is, what does the language mean; and when we find what the language means, in its ordinary and natural sense, it is our duty to obey that meaning, even if we think the result to be inconvenient or impolitic or improbable.

This penchant for the grammatical approach to interpretation by common law judges may be contrasted with the approach used within civil law countries, where the teleological method has priority over literal interpretation (Mechlem, 2000). In France, the highest courts – the Cour de Cassation and the Conseil d’Etat – make use of the teleological interpretation method in their consideration not only of the language of the Act but also the social end that rendered the statute necessary. Likewise, German courts have, as a rule given broad and liberal interpretations to the provisions of the Civil Code (Sauveplanne, 1982). Use of the purposive approach is also nothing novel in the civil law jurisdictions of Canada.

It should be noted, however, that despite the association of certain styles of interpretation with particular traditions, there exist some anomalies. In English common law, a more recent trend away from the strict literal approach is detected.<sup>24</sup>

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<sup>23</sup> (1920) 28 CLR 129 at 161-162.

<sup>24</sup> See, for example, the ruling of Lord Griffiths in *Pepper (Inspector of Taxes) v. Hart* [1993] AC 593 at 617.

In the U.S., judges have as a rule, given less weight to the wording of a specific statute and laid more emphasis on the intention of the legislator and the statutory purpose (ibid). In civilian Latin America, many analysts of the Constitutions and laws of the region stress the existence of legal systems based on strict interpretation of extensive legal codes (Vanden and Prevost, 2002). Despite some countries, for example Argentina, tending towards a progressive construction of statutes as Latin America becomes more democratic and U.S. legal precepts are incorporated in Latin American law, traditional methods have not lost their place (David and Brierley, 1985; Lewis, 2006).

But what of taxing legislation? According to Vanistendael (1996), two competing principles are of overriding importance in the interpretation of tax law - the principle of legality, under which no tax can be imposed except on the basis of law, and which provides the basic argument for the support of the literal interpretation of tax laws; and the countervailing principle that in enacting a tax law the legislature intends that it be effective, that is, that it not be circumventable through artificial manoeuvres. The way in which courts in a particular jurisdiction interpret tax statutes will depend to a large extent on the way in which the laws there are interpreted in general (ibid).

This argument is to a large extent borne out when examining trends within common and civil law countries. In a number of common law countries, as a general rule, tax statutes are interpreted in a narrow and strict manner. In the U.K., the principle that taxation legislation should be subject to a strict literal interpretation was advocated as far back as 1869 by Lord Cairns who argued that in order to tax, the Crown must

be able to bring the subject within the letter of the law.<sup>25</sup> In *Cape Brandy Syndicate v. Inland Revenue Commissioners*, the leading and probably the most cited case in English jurisprudence for the restrictive approach to interpreting tax statutes, Rowlatt J stated:

[I]n a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.<sup>26</sup>

Common law courts have even extended its use of the grammatical approach to cover cases involving various modern and complicated tax planning schemes aimed at tax avoidance.<sup>27</sup> In *Inland Revenue Commissioners v. Duke of Westminster (Duke)*, another leading U.K. case, Lord Tomlin expressed the view that ‘every man is entitled if he can, to order his affairs so as that the tax attaching under the appropriate Acts is less than it otherwise would be’.<sup>28</sup>

In Australia, interpretation of tax statutes was for a long time dominated by literal and restrictive interpretation along the lines of *Duke*. In *Investment and Merchant Finance Corp. Ltd v. Federal Commissioner of Taxation*, a case involving the practice of dividend stripping for the purpose of a tax rebate, the court, on the basis of the principle of legality adopted the literal approach in its advancement of the following argument:

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<sup>25</sup> *Partington v. Attorney General*, [1869] LR 4 E & I App HL 100 at 122.

<sup>26</sup> [1921] 1 K.B. 64, 71, 132 T.C. 358, 366.

<sup>27</sup> Tax avoidance refers to cases where taxpayers structure transactions in a peculiar legal form so as to obtain a benefit unintended by the tax law. A lesser tax burden may result, for example, from a legal construction or transaction that uses a gap or loophole in the law to place the taxpayer outside the reach of the law or within the reach of a statutory provision providing for a lesser tax burden.

<sup>28</sup> [1936] App. Cas. 1 at 24-25

[I]f it be thought that this is a practice that should be checked, it is to that section that Parliament may choose to direct some of its attention. It is not for the courts, however, to depart from Parliament's clear statement...<sup>29</sup>

The literal approach to revenue statutes reached its height in Australia in the early 1980s under the courts of Barwick CJ, an advocate for liberalism and commercial enterprise (Lonnquist, 2003). His views on taxation legislation were most clearly expressed in the case *Federal Commissioner of Taxation v Westrad Pty Ltd*:

It is for Parliament to specify, and to do so, in my opinion, as far as language will permit, with unambiguous clarity, the circumstances which will attract an obligation on the part of the citizen to pay tax. The function of the court is to interpret and apply the language in which Parliament has specified those circumstances. The court is to do so by determining the meaning of the words employed by Parliament according to the intention of Parliament which is discoverable from the language used by Parliament. It is not for the court to mould or to attempt to mould the language of the statute so as to produce some result which it might be thought the Parliament may have intended to achieve, though not expressed in the actual language employed.<sup>30</sup>

Courts in other common law jurisdictions such as New Zealand and India have also hewed to the strict approach, even going as far as to acknowledge that in the case of an ambiguous provision with two possible interpretations, the construction most beneficial to the subject is to be adopted.<sup>31</sup>

The common law approach of adoption of the literal rule in tax statute interpretation can be contrasted with the approach used by countries within the civilian tradition. In line with the general style of civil law statutory interpretation, a number of European

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<sup>29</sup> [1971] 125 CLR 249, 265.

<sup>30</sup> [1980] 144 CLR 55 at 60.

<sup>31</sup> For New Zealand, *Plimmer v CIR* [1958] NZLR 147 at 151; for India, *CIT v. Shahzada Nand and Sons* [1966] 60 ITR 392 (SC).

countries now show clear signs of heading towards a purposive interpretation system with regard to taxing legislation.

Traditionally, countries such as France and Belgium adopted the literal approach as a consequence of the legality principle enshrined within their Constitutions. Despite the traditional strict rule however, French courts have always recognised the authority of the tax administration to submit evidence about the real nature of a transaction, so that it could be re-characterised or re-qualified for tax purposes (Vanistandael, 1996). In line with the USA's general purposive style of statutory interpretation, common law courts there also use this approach in the interpretation of its tax laws. Here, courts have developed a practice of setting aside certain legal constructions that do not have a business purpose but are aimed purely towards the avoidance of tax.

The foregoing illustrates how the tension between the two approaches to statutory interpretation in general, and the interpreting of tax laws in particular, have been resolved in different ways across the two traditions. The literature argues a trend towards the use of strict literal interpretation within common law countries and the use of a purposive approach within the civilian tradition. Despite the noticeable trends, also evident are some deviations from the norm, such deviations resulting in variation even within traditions.

Focusing on taxing legislation and the implications of judicial interpretation for bureaucratic functioning, some argue that jurisprudence which follows the literal approach favours and provides a high degree of legal security for the taxpayer (Vanistendael, 1996; Lonquist, 2003). One major concern is that the adoption of

this rule permits taxpayers to arrange their affairs so as to avoid or pay a lesser tax by taking advantage of loopholes and weaknesses in tax laws. In such circumstances, the bureaucracy is subject to ongoing challenges to decisions made in the application of tax and revenue laws and potential reversal of such decisions by the courts.

On the contrary, applying the purposive approach involves a search for answers by the court - for example on whether or not legal form should take precedence over the substance of a transaction; or whether the law should be subject to some kind of 'economic' consideration. Judges answer these sorts of issues differently according to the case law of various countries; hence there is a degree of uncertainty for all parties involved in litigation. Nevertheless, Lonquist (2003) argues that this approach tends to favour the revenue, for example, by making it harder for taxpayers to avoid paying taxes because judges will not be constrained by the words of a taxing provision and will look beyond to the underlying purpose.

Based on the foregoing arguments, this author reasons that, compared with the strict literal approach, the bureaucracy stands a stronger chance in the exercise of its autonomy where there is a style of statutory interpretation which makes use of the purposive approach.

#### **3.8.4 SYSTEM OF GOVERNMENT**

One of the critical roles of government is making public policy – a function that involves different branches of government, comprising multiple actors with diverse time horizons, powers and incentives. Since the early 20<sup>th</sup> century, trends towards

statism, public interventionism, and a growing use of redistributive and regulatory policies has resulted in an increase in the scope and complexity of government. Greater delegation of policymaking to deal with such complexities has given rise to a bureaucratic 'rulemaking revolution' (West and Cooper 1989/1990:582) that has made the administrative process a primary arena for competition. With the bureaucracy having its own agenda, its own interests, and its own view surrounding agency programmes, bureaucratic autonomy presents political principals with the problem of effective control over an 'unelected fourth branch' (Moe 1985:12). Because the political environment and behaviour of the bureaucracy are partly shaped by the actions of actors in institutions within the political system, it is these institutions which help to provide the context for understanding bureaucratic functioning. Political institutions therefore become central to our understanding of autonomy in practice.

Examining the bureaucratic control game, there are certain key questions that would assist us on the road to our search for answers. Which political institutions have sovereignty over the activities and decisions of the bureaucracy? What type of public structures do these different institutions seek to build? How is bureaucratic behaviour brought into alignment with the preferences of political principals? Analysis of the activity of a particular institution may reveal that it actually has more influence than a concrete reading of the Constitution or any laws would suggest. That each institution has numerous informal powers makes our understanding and analysis of the issues even more difficult (Hammond and Knott: 1996).

Answers to the questions raised above will require first and foremost an identification of the key state institutions with potential for influencing bureaucratic autonomy. An analysis of the role of interests and preferences in determining structural choices, the strategies and mechanisms used for political control, and the resulting impact on the exercise of administrative discretion are all important issues in the advancement of our understanding.

A theory of the effect of the system of government on the exercise of bureaucratic autonomy also stands much to gain from an analysis which takes into account possible differences between different constitutional systems or regime types. In a presidential or separation of powers system, policymaking is divided between two separately elected bodies (the legislature and the president) that are independent of each other. Cabinet members are not members of the legislature and are selected for reasons other than their legislative support. In parliamentary systems, the prime minister is elected to the legislature in the same manner as all other members. Because executive authority, or cabinet, is derived from the legislature, parliamentary systems are typified by a fusion of powers between the legislative and executive branches.

Does a presidential system generate a bureaucracy which is markedly different from that within parliamentary government? Moe (1990) opines that the politics of structural choice is very different in a parliamentary than in a separation of powers system and as a result, the two should have very different public bureaucracies. Eaton (2003) rationalizes such outcomes as resulting from the consistent differences in the incentives and constraints that face policymakers within the two



systems. More in-depth is the argument which takes a holistic view of constitutional systems as package deals which come with their own baggage:

“When nations choose a presidential or parliamentary form, they are choosing a whole system, whose various properties arise endogenously...out of the political dynamics that their adopted form sets in motion” (Moe and Caldwell 1994: 172).

Each system, according to these authors, has a distinctive politics of structural choice that propels the development of government.

In a text examining the politics of policies in Latin America, Stein et al (2006) note that the processes of discussing, negotiating, approving and implementing policies may be as important as the content of the policies themselves. Since ‘diverse rules of engagement’ (ibid:18) can impact on the way in which the game is played, it will be important to focus on the various actors (with their diverse powers and incentives), as well as on the different political institutions and their impact on policy outcomes. Whilst there is utility in examining certain institutional characteristics such as presidential and parliamentary systems, a systemic view can only be accomplished by a study which takes into account key institutions and their interactions.

The remainder of this section examines key political institutions of government and the different mechanisms and strategies used by such institutions to exert control over the bureaucracy. Note that it is not my intention here to enter into a discourse which delves into the finer details surrounding the characteristics and behaviours of political institutions. A thesis of this size and scope will not permit me to adequately

summarize, let alone research, all of the various issues involved. My aim is to capture the essence of how different political institutions make use of various strategies and institutional arrangements to influence the behaviour of the bureaucracy. In drawing comparisons to parliamentary systems, the issue will be kept simple by focusing on the classic Westminster model<sup>32</sup>. In a more complete account which would, for example, make allowance for the existence of coalition governments, the issue becomes far more complicated introducing a range of other institutional factors.

With regard to key political institutions of government, number of these possess a non-trivial ability to control bureaucratic behaviour. Key state institutions include the legislature, the political executive, and the judiciary. Legislatures provide a forum for discussing political, economic and social issues are therefore critical institutions in the policymaking process. They formulate and approve laws to address various socio-economic problems, approve funding for agency programs, and oversee the implementation of government policies.

The political executive consists of the president and cabinet in presidential systems and the cabinet (including the prime minister) in parliamentary systems. As chief executives of government, presidents are very powerful actors through their unilateral power to make a number of structural and procedural decisions. Cabinets serve more as aid to presidents in the policymaking and implementation process (Stein et al, 2006). In parliamentary politics, it is the ministerial cabinet, even more than the legislature, which serves as the locus of executive decision making (Rowat

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<sup>32</sup> Within this model, two major parties compete in elections. The government is formed by the party gaining the majority in parliament.

1985, Epstein and O'Halloran 1999, Strom 2000). As formal heads of the departments and agencies falling under their portfolios, cabinet Ministers are responsible for introducing and guiding to adoption important policy measures, advocating and defending specific policy proposals and decisions, and for evaluating and supervising the details of policy implementation.

The judiciary is another institution capable of influencing the exercise of bureaucratic autonomy. Courts are often required to decide cases dealing with bureaucrats' alleged overstepping of their authority. Judges are therefore required to determine the constitutionality or legality of administrative actions.

Because of the relatively closer proximity of taxing bureaucracies to the Executive and their constant interaction with the Judiciary in filing cases against taxpayers or responding in cases brought against administrative actions, it was decided that because of the more likely impact of these two organs, to focus on these as part of the research.

#### **3.8.4.1 How the Executive May Condition Bureaucratic Autonomy**

Political executives have at their disposal an array of mechanisms, both informal and formal, to exert control over the bureaucracy. Whilst informal constraints are achieved during the course of executive-bureaucratic inter-relations and communication interchange; formal constraints include control over budget submissions, monitoring and oversight, influence over administrative procedures, as well as the use of practices such as centralisation and politicisation.

Informal attempts at control may involve regular daily meetings with senior civil servants; the assignment of tasks to specific individuals within the organisations; or the review of administrative decisions. Interference by political executives in operational matters can sometimes be to an extent where it results in micromanagement of the policy implementation process<sup>33</sup>.

In terms of formal constraints, cabinet ministers and presidents play an agenda setting role for agency appropriations. Final appropriation figures for agency programmes are heavily influenced by the budget estimates that political executives submit to the legislature. In the area of monitoring and oversight, political executives may impose on bureaucrats certain information collection and reporting requirements. They may review the reports from other central agencies or departments charged with monitoring various aspects of agency performance. Evidence of non-compliance with executive directives may result in sanctions, internal personnel movements, transfers, and structural reorganisations.

Autonomy may also be conditioned through influence over agency rules and administrative procedures. In parliamentary systems, where ministers play a central role in the drafting of regulations and departmental circulars, bureaucrats may be instructed how laws should be interpreted and implemented. Rockman (1997) argues that in the U.S. separation of powers system, divided government and the weak political leverage of presidents leads to a growing dependence on presidential use of administrative regulations and executive orders to take the place of, and sometimes to override, statutory mandates.

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<sup>33</sup> For a classic example of this type of interference, see Polidano (1999) on the U.K Prison Service and the Derek Lewis Affair.

Centralisation is another strategy used by the political executive to condition administrative discretion. Central institutions check and balance the activities of bureaucrats in functional areas such as planning and policy formulation, and resources management.

Yet another means of safeguarding against bureaucratic drift is through the practice of politicisation. Researchers distinguish between different orientations or conceptualisations of politicisation (see Stahlberg, 1987; Rouban, 2003). The more widespread view, and the one more relevant for the purpose of this discussion, is politicisation as partisan control of the bureaucracy, whereby party political criteria are used as the basis for the appointment and tenure of public servants. Use of public employment by the ruling party to provide jobs to its members has in some cases resulted in the institutionalisation of patronage/spoils systems and clientelistic practices (Edie, 1984; Stone, 1980). When politicisation occurs, there are no longer any institutional barriers between political masters and the bureaucracy (Rouban, 2003), as political recruits are expected to return the favour of their patron party. Stone (1980) notes that in clientelistic democratic systems, political leaders break the rules of the game without any cost or consequences, often disregarding obligations of institutional accountability. According to Rowat (1985), in countries where top civil servants are strongly politicised in the sense of partisanship, we can safely generalise that such individuals cannot play a truly essential role in decision making processes.

Focusing on comparative politics and comparative government and strategies used to exercise control over the bureaucracy, distinctions have also been made with

respect to the differing behaviours of political executives in different constitutional systems. In both presidential and parliamentary systems, the president and the majority party in power both have a broad electoral base. This broad constituency creates strong pressures for incentives built around public interest (Moe 1985, 1990; Moe and Caldwell, 1994; Stein et al, 2006). Viewing good governance and sound public administration as effective strategies for promoting public good, political executives in both regimes strive for a system with an institutional capacity that will allow them to take charge of government. Such a system is achieved via bureaucracies which can be controlled from the top (Moe and Caldwell, 1994). Despite these similar goals, however, one fundamental difference lies in the relative ability of these executives to achieve their objectives. Whereas in parliamentary systems the majority party has unchallenged authority to build the type of system it desires, under presidential government system fragmentation and constant opposition presents presidents with a number of challenges (Moe and Caldwell, 1994). This leads to a different emphasis in terms of the relative importance of the strategies used by executives within the two regimes.

Modern U.S. presidents make use of the ‘institutional presidency’<sup>34</sup> to strengthen its capacity for bureaucratic control (ibid: 190). This has led to an emphasis on two major forms of bureaucratic control: centralisation and politicisation. Unlike the British Westminster system where two main central agencies – Cabinet and the Treasury - have oversight over the bureaucracy, in the U.S. presidential system, a

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<sup>34</sup> Moe (1985, 1993) describe the ‘institutional presidency’ as a structural feature which extends beyond the boundaries of the White House and the Presidential Office to include various other presidential organisations. It also refers to the patterns of behaviour that link the Presidency to other parts of the political system. Golden (2000), in a similar vein, makes reference to an ‘administrative presidency’ - a management strategy designed to bring the fourth branch to heel and to create a more compliant and responsive bureaucracy through enhanced presidential control. Presidents are able to achieve their policy goals administratively through the bureaucracy rather than legislatively through Congress.

high degree of centralisation results in the oversight of a single policy area sometimes being split amongst a range of central bureaus and committees. The U.S. separation of powers system is probably the best known example of politicisation (Mulgan, 1998). In their search for 'responsive competence' (Moe and Caldwell, 1994:188), modern U.S. presidents assume office with the supposition that government has no organic past (Aberbach and Rockman, 1988). Strategic appointments are made 'as far down into the bowels of the agency as the law would allow' (Golden 2000:07).

Some researchers argue that there has been an erosion of the strong tradition of politically neutral career officials at the top and senior levels of the bureaucracy in parliamentary systems and an increase, over the years, in levels of politicisation (Rowat, 1985; Mulgan, 1998; Huber and Shipan, 2002). Machine politics or patron-clientelism has been identified as a dominant feature of the organisation of mass support for competitive political parties in third world countries (Stone, 1980). Riggs (2001), a classical development writer advocated the spoils system for developing countries as a means of ensuring political control of the bureaucracy. Other researchers argue, however, that such practices have not developed in any systematic way and that the pursuit of merit recruitment prevails in most western administrative systems (Stahlberg, 1987; Rouban 2003). In parliamentary Westminster type regimes, because the majority party has unchallenged supreme authority and a variety of means to discipline non-compliant bureaucrats, it can afford to rely on an institutional structure which is built around "neutral competence" (Moe and Caldwell 1994:187). Stone (1980) notes that in the liberal democracies of advanced capitalist countries, tendencies towards politicisation are muted and

restrained by various institutional forces – by the rules of accountability to other institutions, by a more active, knowledgeable and independent public opinion, by a diverse powerful and independent mass media and, by legal institutions that limit excessive personalised authority. These and other countervailing tendencies keep clientelistic power tendencies in check and guarantee more impersonal, predictable patterns of administration.

#### **3.8.4.2 How Courts May Condition Bureaucratic Autonomy**

Do courts interfere with the bureaucracy? Hammond and Knott (1996) distinguish between two possible types of constraint: procedural and substantive. With procedural constraints, formal constitutions or agency-specific legislation may specify the procedures which must be followed to safeguard against arbitrary or capricious decisionmaking. In its enforcement capacity, the court may rule that bureaucrats honour such provisions of the law. Substantive constraints, on the other hand, relate to court judgements in administrative choices. The Court must judge whether a specific administrative decision is legally permissible under the Constitution or under the statute delegating authority to the agency. Decisions may uphold or challenge agency actions. When the judiciary upholds the terms of the delegation, the agency is being allowed to autonomously manage some area of policy as it sees fit (Stein et al, 2006). Autonomy is also influenced by the outcome of appellate cases. Landmark appellate decisions may lead to incremental or radical shifts in administrative processes and procedures in order to address the issue which formed the subject of the court's decision, or to reflect dominant legal viewpoints (Beckett 2007).



Empirical findings on judicial/bureaucratic relations point to an uneasy partnership between the two institutions. Beckett (2007) highlights the differing levels of deference by the courts to administrative interpretation of statutes and administrative processes. At the low end of the scale are Latin America countries which have, over the past few years, witnessed an increase in the number of judicial rulings against executive preferences (Stein et al, 2006).

### **3.9 Conclusion**

Having argued the need for political principals to ensure alignment of the interests of bureaucratic agents with political preferences, and their efforts at political control to maintain accountability, this chapter focused on some of the conditioning factors that may serve to enhance or retard the practice of administrative discretion. The literature underscored the need to go beyond myopic focus on the organisation's internal production function, the imperative to recast organisations as open systems and therefore the importance of reexamining the role of institutional factors on administrative functioning. This study is therefore interested in the consequence of such an open and dynamic context within which fiscal entities operate. The study's rejection of a single factor explanation and its adoption of an approach that draws on two explanatory theories – resource dependency theory and institutional theory – will not only assist in the identification and analysis of factors at various level of the environment (micro-, meso- and macro- level), but will allow for the assessment of the relative weighting of respective groupings. Whilst internal micro-level factors such as structures and systems, resource availability and resource control may explain a small amount of the variance between formal and factual autonomy, it is

hypothesised that broader macro-institutional independent variables such as interest group participation, the legal/administrative framework, legal tradition and system of government may explain far more efficiently the variance under investigation. Chapter one and this Chapter respectively made mention of politico-administrative cultures. Part of the investigation is to determine whether, for example, certain conditioning factors have followed historical paths and the effect of such trajectories on administrative decision-making.

## **PART II: METHODS AND BACKGROUND**

## **CHAPTER 4**

### **RESEARCH DESIGN, CONTEXT AND METHODOLOGY**

#### **4.1 INTRODUCTION**

Figure 4.1<sup>35</sup> is a graphic illustration of the study's overall research process. Outcomes of phases 1 to 4 served as the basis for discussion in chapters one to three. This chapter, which focuses on the remaining phases 5 through to 8, examines the study's research design, sources and methods of data collection, as well as the method of data analysis and reporting of findings. Comparative case research that draws on the qualitative method was used as the basis for conducting this idiographic explanatory study. Methods of data collection involved a combination of literature and documentary review of primary and secondary data sources, individual indepth focused semi-structured interviews (SSIs), and focus group discussions FGDs. Data collected were analysed and cross-checked using techniques of pattern-matching, qualitative content analysis and triangulation.

#### **4.2 THE RESEARCH DESIGN**

Determining how best to design a study of the social world is still a highly contested issue across several research disciplines. Appendix X illustrates the two fundamentally different and competing paradigms that have given way to different

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<sup>35</sup> Despite the process being depicted as linear, this was not actually the case. For example, even at the early stage during problem definition and development of the theoretical framework, consideration was being given to research design issues.

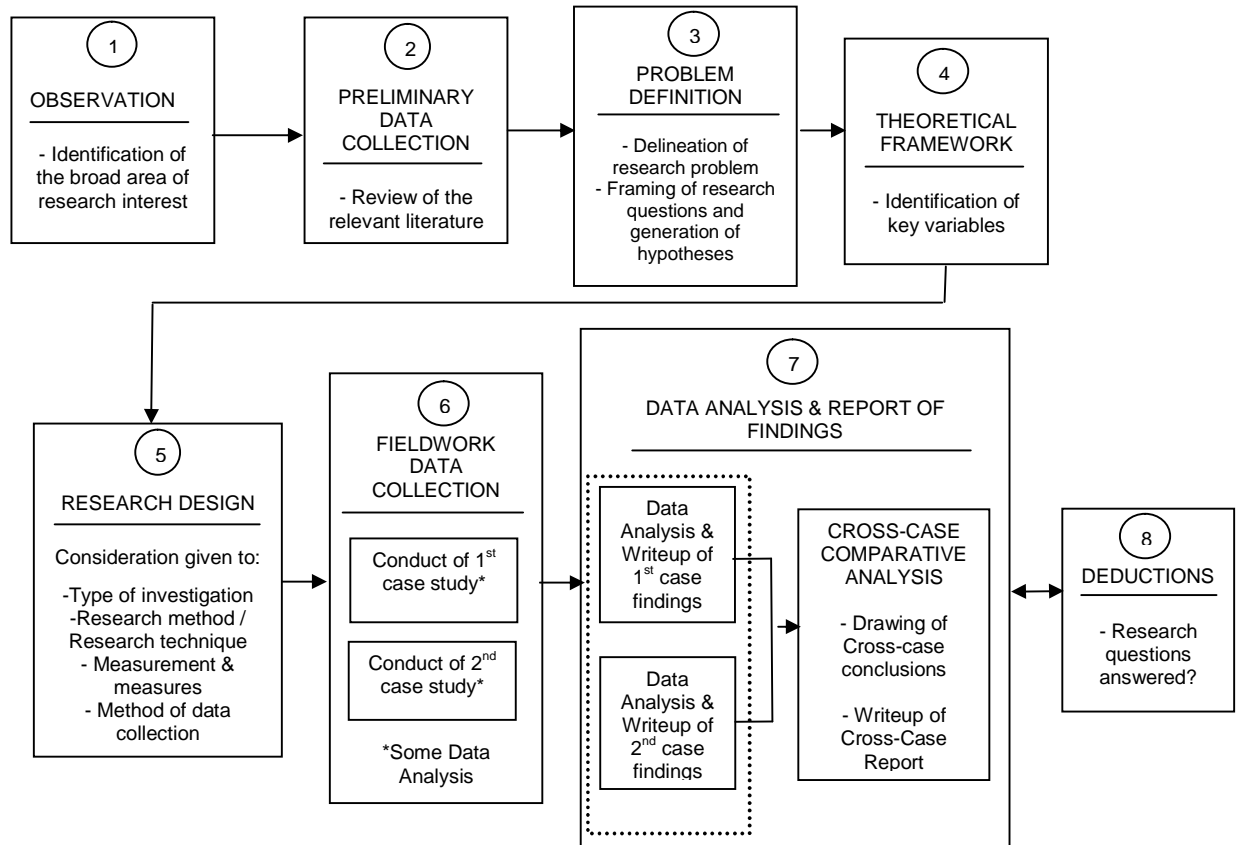


Figure 4.1: The Study's Research Process

Adapted from Sekaran (1992)

methodological stances. Whilst positivist researchers make use of quantitative methods such as surveys and experiments to test hypothetical-deductive generalisations, post-positivists make use of qualitative approaches in order to holistically understand experience within context-specific settings. Data are interpreted idiographically in terms of the particulars of the case, rather than nomethetically in terms of lawlike generalisations (Patton, 1990).

Despite the philosophical divide and the disagreement which continue over the appropriateness of the different methods, one convergence in thinking is that there is no perfect research design. Each method, given its limitations, is only an

approximation to knowledge, providing as it does a different glimpse of reality. Hence the call for 'pragmatism' in choice of appropriate method (Patton, 1990:39; Snape and Spencer, 2003: 15) rather than adherence to a set of methodological principles, however strongly supported by philosophical arguments. Choice of method should be based on criteria such as the purpose of the inquiry, the specific nature of the phenomenon under study, the state of existing knowledge; resource availability; and administrative convenience (Lijphart, 1975; Downey and Ireland, 1979; Bonoma, 1985; Benbasat et al, 1987; Yin, 1989; Patton, 1990, 1999; Flick, 2006). The issue is appropriately summarized by Warwick (1973:190) who draws an analogy between the choice of research method and the selection of an accessory lens for a camera:

“It is almost meaningless to ask in the abstract which is better: a wide angle or a telephoto lens. The answer depends completely on the type of picture that one wants – broad panoramic coverage or more intense concentration on expression and detail.”

This study opted for the latter type of picture, resulting in a design choice of comparative case research that draws on the qualitative method. The following sections explain.

#### **4.2.1 COMPARATIVE CASE RESEARCH**

Case research or case studies continue to be used extensively, including in the traditional disciplines such as anthropology, clinical psychology, and political science; as well as in the practice-oriented fields such as public policy, public management, urban planning, and management sciences. Multiple definitions of the case study abound. Probably most cited is Yin (1989:23) who defines the case study

as 'an empirical enquiry that investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident; and in which multiple sources of evidence are used'. Case research is deemed highly suited to sticky, practice-based problems where the experiences of the actors and the context of the action are of critical importance (Benbasat et al, 1987); and for when propositional depth is prized over breadth and boundedness (Gerring, 2004). Unlike statistical analysis where the focus on incidence does not permit the tracing of processes over time, case research goes beyond providing a static snapshot of events, cutting across 'the temporal and contextual gestalt of situations' (Bonoma, *ibid*).

Of the single case study, an *n* of one, we are told, can be adequate if the treatment of the material is sufficiently generic or if the quality and nature of the findings are suitably unique (Pettigrew, 1990). Bekke et al (1996), however, highlight the dangers of concentrating on the single case and assuming that one country is either so general that all others are like it or is so particular that no others need to be compared. The fact that findings may be the result of the idiosyncrasies of the particular research setting is something of which the researcher needs to be mindful. Add to such arguments the fact that research within the confines of a single country where the context is fixed, does not allow for the broader institutional context to play any part in theorising or empirical testing (Huber and Shipan, 2002).

To counter such methodological limitations, one strategy is a research design which makes use of comparative case research<sup>36</sup>. Unlike single case design where the

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<sup>36</sup> In this study, the terms 'comparative case research', 'comparative method' and 'cross-national comparison' and 'cross-case analysis' are used interchangeably.

emphasis is on a focused and bounded phenomenon embedded within its context, the 'comparative method' refers to 'social scientific analyses involving observations in more than one social system, or in the same social system at more than one point in time' (Warwick and Osherson, 1973:8). With the current emphasis on contextualisation, such cross-national comparisons are increasingly being used to better understand social reality within different contexts, i.e. how processes and outcomes are qualified by local conditions, and thus to develop more sophisticated descriptions and more meaningful explanations for national likeness and unlikeness

This study for varied reasons makes use of the comparative method. Case research was deemed to be best suited to the highly complex phenomenon being investigated and to the study's broad research objectives. Although quantitative large-n research of the survey type would allow for broad coverage of the issues, statistically reliable and generalisable findings; the goal here is not breadth or representativeness, but primarily depth of knowledge. Beyond the single case design, comparative cross-case analysis will allow for a better understanding of the role of institutional context and how both the thinking and practice of autonomy might vary under different circumstances.

#### **4.2.2 USE OF THE QUALITATIVE METHOD**

Method indicates the type of research tools and techniques which might be used to collect empirical evidence (Cavaye, 1996), the two basic types of data collecting methods being nomothetic or quantitative methods (based on numeric data) and idiographic or qualitative methods (based primarily on verbal data). The primacy of quantitative research during the 1930s-1970s gave way from the late 1970s to an



expansion of interest in the qualitative method, and its spread across the various social science disciplines. Unlike quantitative study, qualitative research largely informed by the naturalist or interpretative stance, studies phenomena within their natural settings. According to Denzin and Lincoln (2003: 13), the word 'qualitative' implies an emphasis on the qualities of entities and processes and meanings that are not experimentally examined or measured (if measured at all), in terms of quantity, amount, intensity, or frequency.' The focus is not on linear cause-effect relationships, but rather an attempt to gain in-depth knowledge of the complexes of social action and social meaning systems of people who affect or are affected by the phenomenon under study. The researcher's subsequent role involves his/her engagement in a process of 'reconstruction of the *respondents' constructions* (Lincoln and Guba, 1985: 359, original emphasis).

Various researchers have cited the primary virtues of qualitative data to include their richness and holism, vividness, clarity, and provision of thick description (Jick, 1979; Lincoln and Guba, 1985; Platt, 1988; Orum et al, 1991). According to Miles and Huberman (1994), the advantage of qualitative portrayals of holistic settings and impacts is that greater attention can be given to nuance, setting, interdependencies, complexities and context.

In this study, use is made of qualitative measures for the primary reason that the institutional issues being investigated, such as rules and regulations, behaviours, values and meaning systems, are largely non-statistical constructs not easily amenable to quantification or operationalisation in quantitative terms. As an explanatory case study, thick data gathered via qualitative means would assist this

author in the search to go beyond quantitative snapshots of what and how many, to focus on how events unfolded and likewise to attempt some assessment of causality in response to the posed research questions.

### 4.3 THE COMPARATIVE FOCUS

Chapter 1 already elaborated on the study's research context. Just as a reminder to the reader, the comparative case study focuses on revenue administrations (tax and customs) in the Caribbean islands of Jamaica and the Dominican Republic. The following section elaborates on the manner of conduct of the comparative analysis.

Figure 4.2 serves to illustrate important features about the study's comparative focus. The two case studies embodying the four focal organizations allow both for a within-country comparison, as well as a cross-case analysis. Whilst the within-country comparison provides for constancy of context<sup>37</sup> and allows for testing of localised factors, the across-country comparison allows for the testing of contextual variables. The within country comparison is indicated by the vertical arrows inside of each ellipse. The across-country comparison is indicated by the horizontal arrows between the two ellipses. The vertical arrow  $t_1...t_n$  represents the temporal dimension, illustrating how fiscal administrative reform efforts are being investigated as contextualised processes evolving over time.

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<sup>37</sup> The analysis therefore takes advantage of the many similar national characteristics serving as controls.

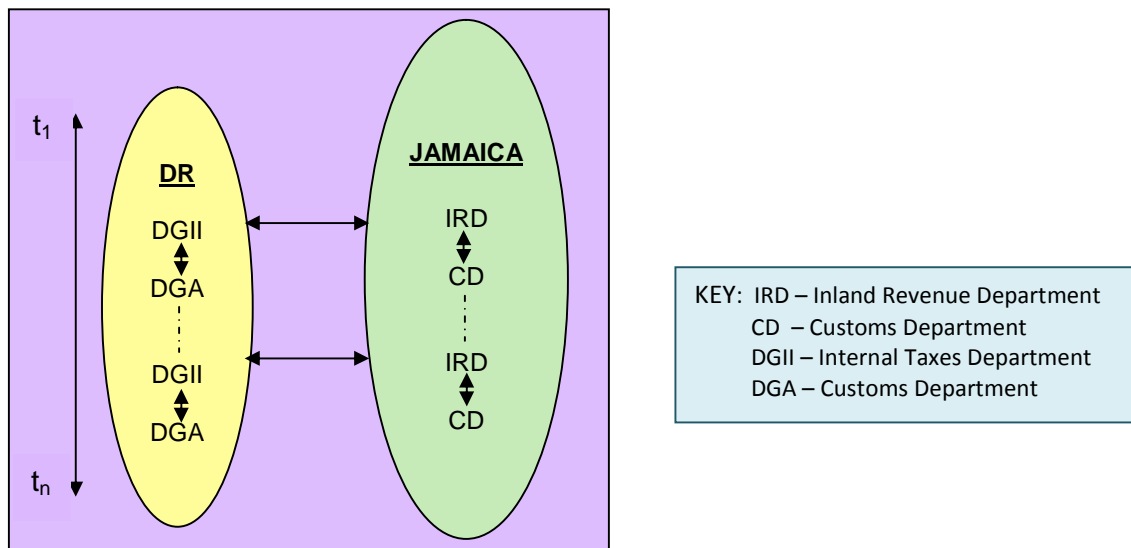


Figure 4.2: The Study's Comparative Focus

The nature and extent of autonomy exercised by the Dominican organisations is therefore not only investigated relative to the Jamaican cross-case experience but also relative to each other, and relative to their own pre-reform status.

The lack of symmetry of the two ellipses in the diagram symbolises the relative weighting given to the focus on and analysis of the two cases. In this “lens” or “keyhole”-styled comparison (Walk, 1998: 1), the Dominican case serves as a lens or framework for understanding the Jamaican case which is the main focus of the study. Data on the pre-reform experience of the focal organizations in the DR is used as a proxy measure to test or check similarities with the experiences of the Jamaican organisations pre-TaxARP.

As noted by Pettigrew (1990) about the use of such an approach, one limitation with the treatment of the DR as a less intensive case is that while there may be an

approximate equivalence of standards on what change has occurred (the content of reform), there will be a weakening of data richness and interpretation of how and why change occurred (the process and the context of reform).

#### **4.4 THE RESEARCH METHOD**

##### **4.4.1 MEASUREMENTS AND MEASURES**

The proper operationalisation of theoretical concepts is an obviously necessary condition for testing any theory, unless the theory itself has been formulated in strictly observable language, something that is a rare exception in the social science (Nowan, 1989). Moving from theoretically meaningful concepts to their empirically observable manifestations, however, can sometimes prove quite challenging. Adcock and Collier (2001) provide what I consider a useful roadmap to aid in this task. Figure 4.3 illustrates their framework with some of the tasks and key issues involved in the measurement and establishment of empirically valid measures.

Depicted at the highest level is the 'background concept' that encompasses the range of potentially diverse meanings associated with a given concept. Measurement, the interaction among levels 2 to 4, involves three sequential tasks: (a) moving from the broad background concept to the formulation of an explicit definition or 'systematised concept' which is adopted by the researcher; (b) the operationalisation of the systematised concept to produce valid measures or indicators; and (c) the scoring of cases to arrive at findings or observations (scoring not applicable for the purpose of this study).

Regarding levels 1 and 2 involving the task of conceptualisation, the reader will recall that in chapter two, I presented both the background and systematised concepts in respect of the study's dependent variable. Having discussed some of the general meanings and understandings associated with the construct of autonomy, this author presented her own definition of the concept as used in the study. Bureaucratic autonomy was defined as 'the constrained freedom or independence available to or acquired by an organisation, which enables it, in its actual behaviour, to freely and independently make strategic and operational decisions without outside interference'. It was noted that the autonomy or freedom being referred to here, is autonomy from state authorities, state institutions and external societal actors within the policy environment.

As a logical follow on from Chapters 2 and 3, the next level of the measurement process involves the task of the operationalisation of the concept of autonomy and the development of a set of suitable measures or indicators. The following two sections describe in detail the measurement of the dependent variable, as well as the framework used to analyse factors impacting on the exercise of bureaucratic autonomy.

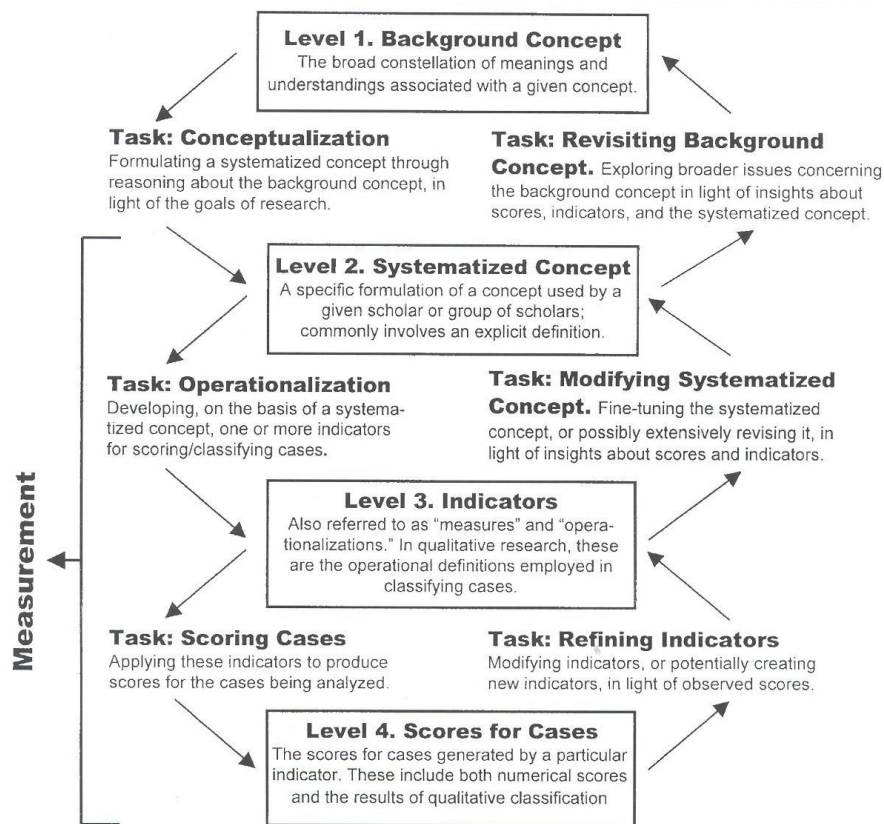


Figure 4.3: Conceptualisation and Measurement - Levels and Tasks

Source: Adcock and Collier (2001: p.531)

#### 4.4.1.1 Measuring Bureaucratic Autonomy

Mentioned earlier was the need to establish an operational concept of autonomy in order to empirically establish its prevalence as well as its consequence within the focal organisations. The central goal here is to obtain an accurate and valid measure of the phenomenon under study.

On the subject of measurement validity, worth highlighting is the distinction made by Adcock and Collier (ibid) between measurement issues and disputes about concepts. Since within a given discipline there will exist some background concepts

which are straightforward and easily understood and others which are complex and controversial, any assessment of the quality of a measure of such contested concepts 'should focus on the relation between observations and *the systematised concept*' (ibid: 530-531, own emphasis added), leaving aside potential disputes about the background concept as an important but separate issue.

This argument is particularly poignant within the present context. Given the fuzziness and ambiguity surrounding the concept of autonomy, I argue that any attempt at its operationalisation is likely to be contested on the grounds of an alleged misfit with one or other understanding of the construct. The point being made, therefore, is that in this study, the manner of measurement of the dependent variable should be assessed not against any possible conceptions of bureaucratic autonomy, but rather against the 'systematised concept' or definition proffered earlier by this author, and in the context of the research questions being addressed.

Presently, there is no germane set of indicators for measuring autonomy. Contemporary empirical research examines the issue from a variety of methodological perspectives (Ballou, 1998). In most studies, the focus is on a few selected dimensions, each dimension measured at a very broad level, using only one or two indicators (Verhoest et al, 2004). In this study, which focuses on formal, informal, and factual autonomy, the dependent variable is operationalised using the autonomy index developed by Verhoest et al (ibid). The authors argue that, although one trade-off of their detailed and comprehensive indicator set is the time-consuming character of the research, their product is an instrument with a high degree of measurement validity.

Figure 4.4 illustrates the measure used to assess the relative nature and extent of autonomy of the revenue departments. Bureaucratic autonomy is measured using two broad categories, encompassing six different dimensions:

- (1) Autonomy as the *level of decision-making competencies* formally granted to the organisation, which encompasses managerial (financial management and human resources management) autonomy and policy autonomy; and
- (2) Autonomy as the *exemption from constraints on the actual use of decision-making competencies*, which includes legal, structural, financial, and interventional autonomy.

The figure shows, under each of the dimensions, the various indicators which are used for more detailed measurement and analysis.

In a number of empirical studies, including the one from which this measure is taken, the overall autonomy of the agency in comparative terms is measured via summation or aggregation of the weighted quantitative scores for each of the dimensions. Given the perils involved in assigning subjective weights to dimensions and affixing quantitative values to qualitative data (Kidd and Crandall, 2006), and considering the small-n scale of the research, in this study, measurement of relative levels of bureaucratic autonomy is purely qualitative.



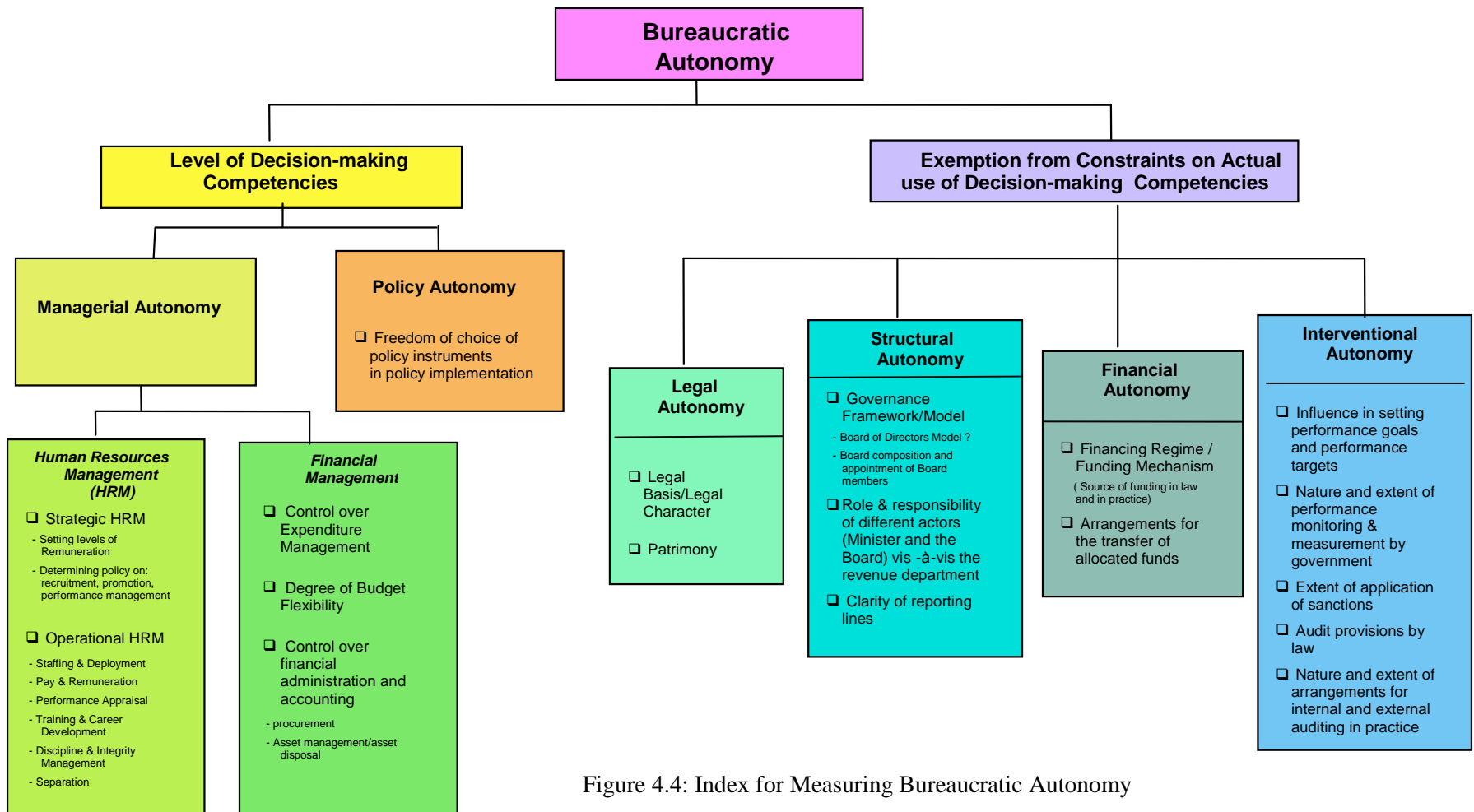


Figure 4.4: Index for Measuring Bureaucratic Autonomy

Adapted from Verhoest et al. (2004)

#### **4.4.1.2 Conceptual Framework for Analysing Factors Influencing Autonomy**

A conceptual framework<sup>38</sup> explains graphically or in narrative form the presumed relationships among the key factors, constructs or variables considered integral to the dynamics of the phenomenon being investigated (Sekaran, 1992; Miles and Huberman, 1994). Making use of prior theorising and empirical research as important inputs, frameworks can be rudimentary or elaborate, descriptive or causal. Figure 4.5 is a schematic presentation of the theoretical framework used to guide the investigation and analysis of factors impacting on the practice of bureaucratic autonomy.

With regard to theoretical input, in developing the model, a number of theories were evaluated in terms of their relative strengths in explaining those factors most likely to impact on the decision-making competencies of the bureaucracy. Chapter three discussed the utility of resource dependency theory in explaining the role and importance of the task environment; in particular, the notion of resource exchange as a central feature of the relation between an organisation and its constituencies, and the linkages among organisations as a set of power relations. Recognising, however, the inherent limitation in a single theoretical explanation which focuses on organisational factors and factors within the focal organisation's immediate task network, this author sought a complementary theory whose arguments extended beyond the traditional approaches. Chapter three also examined the role of institutional theory in its portrayal of the organisation as an open system embedded within a broader institutional

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<sup>38</sup> The terms 'conceptual framework', 'theoretical framework' and 'conceptual model' are used interchangeably during the discussion.

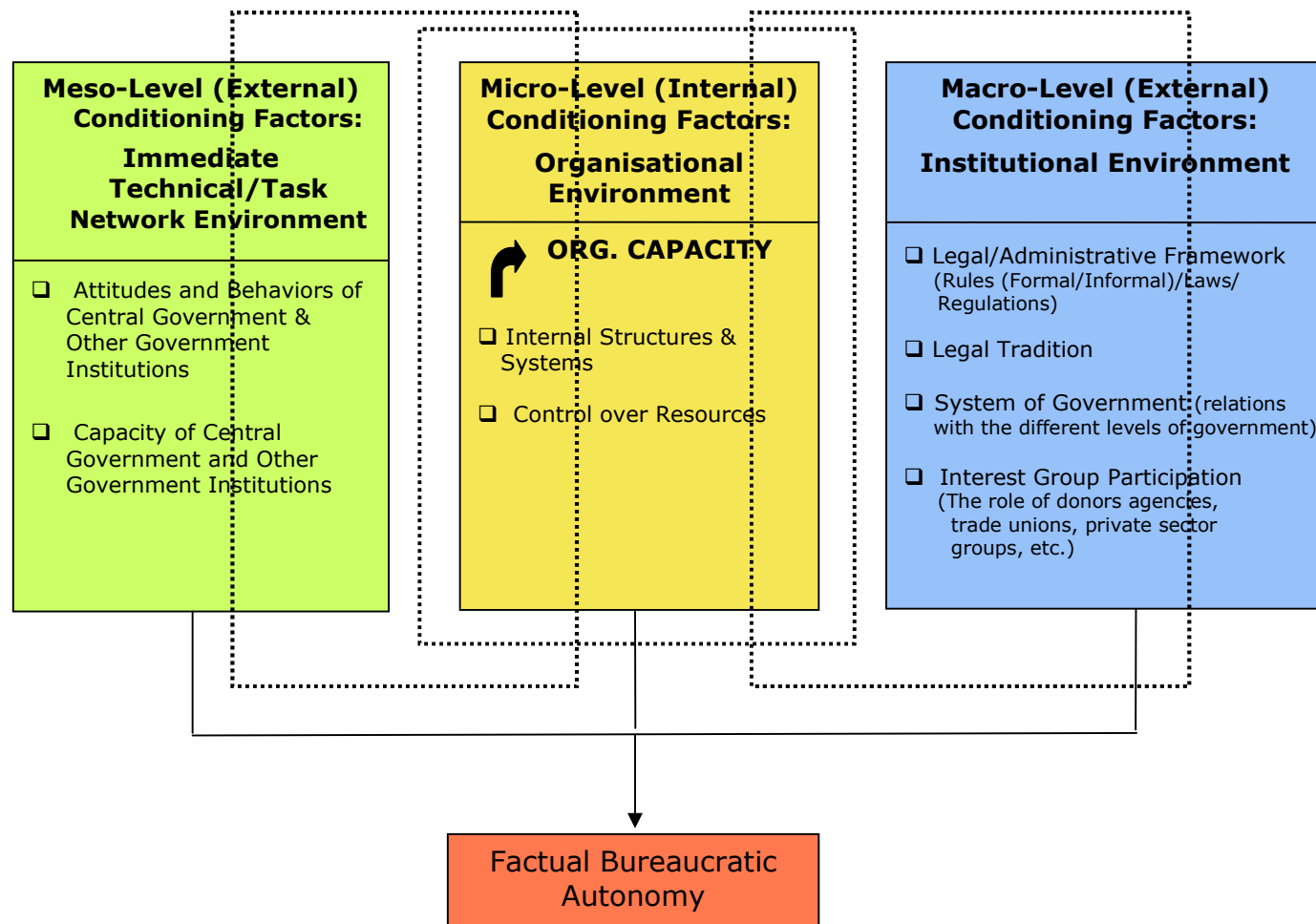


Figure 4.5: Framework for Analysing Factors Impacting on Bureaucratic Autonomy

- Dotted lines suggest the porosity of the environment, and the potential overlap of factors that may not be contained within the environment in which they are represented as a part.

environment – much of that environment consisting of a nexus of formal and informal rules, politics, social and cultural forces that inflict normative and coercive pressures.

Applied, therefore, to the study are the convergent insights of resource dependency and institutional theories to develop a framework which focuses on factors at three inter-related and substantive levels. In addition to input from these theoretical approaches, the framework also draws heavily on the empirical work of Grindle and Hilderbrand (1997); Larbi (1998a); and Batley and Larbi (2004). The framework suggests that factors at the micro organisational, meso task network, and macro broad environmental levels impact on bureaucratic functioning and bureaucratic autonomy.

Having identified the three broad categories, the question then remained which variables should be included within each of the categories. Sekaran (1992) extols the virtues of a meaningful and parsimonious framework which explains the variance far more efficiently than an elaborate and cumbersome one encompassing an unmanageable number of factors which only marginally add to the explained variance. In selecting indicators, use was made of this strategy of parsimony (Lijphart, 1975; Sekaran, *ibid*; Miles and Huberman, 1994) to judiciously restrict choice to those variables which, at least at the outset, seemed most important given the subject being investigated. The three broad areas of analysis are operationalised using indicators that include: the legal and administrative framework; legal tradition; government; interest group

participation; internal structures and systems; control over resources; attitudes and behaviours, as well as the capacity of central government and other government institutions.

The model suggests that reforms which maintain continued controls in any or all aspects of these identified factors will result in the reduced capacity of the bureaucracy to function autonomously. The model, it should be noted, was not a static one-off creation. As data were collected, the framework underwent about three revisions where empirically less meaningful factors were replaced with more meaningful ones.

#### **4.4.2 DATA COLLECTION: INSTRUMENTS AND PROCESSES**

In order to achieve its objectives, one of the main requirements of the study is to collect data which are *historical* (that take into account pre-reform situations); *processual* (that focus on the evolution of change); *contextual* (that examine the relations between process and contexts at different levels of analysis); and *plural* in nature (that describe the differing versions of reality as perceived by different actors involved in the reform process).

Qualitative studies generally rely on the integration of data from a variety of methods and sources of information, a general principle known as triangulation. The logic underlying triangulation is rooted in the complexity of social reality, and the limitation of all research methodologies, namely that no single method ever adequately solves the problem of rival explanations. Reliance on a single piece runs the danger that undetected error in our inferences may render our analysis

incorrect (Hammersley and Atkinson, 2006). By triangulating, the weaknesses in a single method are compensated for by the counterbalancing strengths of another. According to Snow and Anderson (1991), by adding one layer of data to another to build a confirmatory edifice, constructs and hypotheses are more strongly substantiated, adding rigour, breadth and depth to the investigation.

In this study, data gathering methods involved the initial desk study, the conduct of individual phenomenological semi-structured interviews (SSIs), focus group discussions (FGDs), as well as documentary analysis of various source documents. These various sources not only allowed for the gathering of historical, processual and contextual data from a range of perspectives, they also allowed for triangulation. Field data were collected in two separate phases over a total period of seven and a half months (four and a half months in Jamaica, and three in the DR), between the beginning of May 2006 and the end of January 2008. The second field visit was undertaken to collect additional data to address research hypotheses on legal tradition and system of government. Table 4.1 summarises the methodology for data collection. Given the brevity of the table information, a bit more detail is provided on key methodological issues including the development of the topic guides, interviewee selection, the interview process, as well as the documentary analysis.

#### **4.4.2.1 The Questionnaire Instrument and Interview Topic Guides**

Linked to the framework illustrated in Figure 4.4, a questionnaire instrument was devised to measure autonomy along all seven dimensions (legal, structural,

policy, financial, financial management, human resource management, interventional) as identified. In Part I of the questionnaire, items are used which measure the full range of freedoms, from low to high levels of independence. Data is also captured pre- and post-reform for each dimension. Part II of the questionnaire captures more in-depth qualitative data on the nature and extent of interventional autonomy. Attached at Appendix XI is a copy of the questionnaire instrument.

A main topic guide was devised to measure influences on bureaucratic autonomy at the various levels of environment. A second guide was also developed and used during the second field visit to collect data on the legal tradition independent variable. One major issue with the development of data collection tools was that whilst these needed to be as comprehensive as possible to ensure capture of current, historical, processual and contextual data, care needed to be taken with respect to the intrusion on the interviewees' time.

Both guides make use of open-ended questions to enable interviewees to frame their own unique responses. Incorporated was a mixture of questions relating to 'factual' knowledge, personal experiences and behaviours, as well as values and opinions; with questions grouped under the same theme. Some questions were augmented with probes that served as cues to the interviewer for the level of detail desired for responses. Note that despite the wording of the main topic guide, questions were asked in relation both to pre- and post-reform status.

Srl. No.	DATA GATHERING METHOD	NATURE OF THE WORK UNDERTAKEN	COMMENTS
1.	<b>DESK STUDY</b>	Literature review on subjects of Public Sector Reforms, New Public Management, Decentralisation and Autonomisation. Library sources included University of Birmingham (physical and online resources); University of London's Senate House Library; and the Institute of Commonwealth Studies. Online searches of website of international organisations such as the World Bank and other institutions with a development portfolio.	Desk study resulted in the narrowing of the research focus and a consolidation and integration of the key issues. Gaps identified assisted in the development of the study's central arguments and the formulation of the research questions.
2.	<b>QUESTIONNAIRE DATA COLLECTION &amp; INTERVIEWS</b>	<p>Study involved:</p> <ul style="list-style-type: none"> <li>• 2 phases of fieldwork data collection</li> <li>• Total of 149 in-depth semi-structured interviews involving 115 respondents, plus some informal conversations</li> <li>• Within the organisation's internal environment, a cross-section of individuals interviewed at all levels of organisational functioning</li> <li>• Within the task network environment and broader institutional environment, interviews conducted with senior officials in central government institutions, senior officials in private sector entities, members of the judiciary, academics, plus others with a vested interest in the functioning of the organisations</li> <li>• Use of Key Informant Methodology to select interviewees. Key Informants selected primarily via information from documentation such as the Organisational Chart, the Civil Establishment Order, the Staff List, and Job Profiles. Some interviewees recommended as a result of the process of snowballing.</li> </ul>	<p>Data on the nature and extent of autonomy was largely collected via the administering of a questionnaire instrument (See Appendix XI).</p> <p>The interview process was guided by the development and use of two separate topic guides to collect data on influences on bureaucratic autonomy (See Appendices XII and XIII).</p> <p>Topic Guides were developed using the study's research questions and theoretical framework as a basis.</p>
3.	<b>FOCUS GROUP DISCUSSIONS (FGDs)</b>	<ul style="list-style-type: none"> <li>• Open ended interviews with a homogeneous group of typically 6-8 persons lasting between 1-1 ½ hours</li> <li>• Total of 24 FGDs held. Data were used to triangulate information collected during one-to-one interviews and documentary analysis</li> </ul>	
4.	<b>DOCUMENTARY ANALYSIS</b>	<ul style="list-style-type: none"> <li>• Use of a range of open-published and restricted official government documents, plus privately authored open-published materials</li> </ul>	These included Bills, Legislation, Reports and Newspaper Articles (See end of References for documentation consulted)

Table 4.1: Methodology for Data Collection



Copies of both interview guides are attached at Appendices XII and XIII. For the Dominican case study, prior to the field visit, both guides were forwarded via email for translation of the questions from English into Spanish to the liaison officer identified to assist me during the fieldwork.

#### **4.4.2.2 Selection of Respondents: Use of the Key Informant Method (KIM)**

A plurality of perspectives was derived from interviewing a wide range of stakeholders both internal and external to the focal organisations. Within the organisations, interviews were conducted with senior management personnel who dealt with policy issues at the strategic level and who worked closely enough with policymakers to be able to offer judgement about the latter's behaviours and attitudes. The elite bias (Miles and Huberman, 1994) was avoided by also including individuals at the middle and lower organisational levels. External stakeholders interviewed included senior managers in institutions in the focal organisations' immediate task environment. These included government officials in Ministries and other government departments. Other stakeholders interviewed with an interest in the functioning of the revenue departments included senior officials in private sector companies. In Jamaica, also interviewed were recently retired senior civil servants, as well as a few university academics with specialisation in the fields of politics and government. In essence, the study's range of interviewees included both those who acted as the initiators of change as well as those who were affected by the changes.

With regard to the actual selection process, interviewees were selected using the key informant method (KIM), a technique whereby informants are not selected at random, but rather on the basis of their position in the organisation or, because they are supposedly knowledgeable about the issues being researched (Phillips, 1981; Bagozzi et al, 1991; Kumar et al, 1993).

In selecting key informants (KIs) within each of the organisations, use was made of the current organisational chart and the 'Staff List' or 'Civil Service Establishment Order' as appropriate, to identify the various Divisions/Sections; job titles; and the number of posts allocated for each title within a Division or Section. The assigned liaison officers were responsible for contacting divisional or section heads to schedule interview meetings. In a number of cases, it was the division or section head who was actually responsible for selecting the interviewees (in particular, when more than one post was allocated for a particular title and they were a number of incumbents from whom to choose).

Cognizant of this selection problem associated with the KIM, a few precautionary measures were taken to avoid measurement error. Different strategies were used to both ensure and evaluate the competency of KIs to report on issues. Firstly, in both case studies, in order to avert a situation where the task of providing the needed information was delegated to whoever was most available, at the start of the interview scheduling process, liaison officers were asked to emphasise to Division and Section Heads the importance of selecting respondents on the basis of knowledge rather than convenience. Secondly, to evaluate the competency of

informants, three items at the beginning of the topic guide collected information on the interviewee's current position, his/her length of time in the organisation, as well as the length of time within the current position. By including such items, I was able to ascertain (1) whether the person holding the title carried out the duties as envisioned and (2) where appropriate, whether the person held the position when the event being investigated occurred.

With regard to the selection of KIs external to the revenue departments, again selection was based on organisational title. Organisations with whom the revenue administrations directly interface, as well as other stakeholders with an interest in the functioning of the focal organisations were contacted directly in order to schedule interviews with persons in senior management positions. University academics likewise were contacted directly at their offices in order to arrange meetings at times and dates that were mutually agreeable.

In addition to identifying KIs on the basis of position within the organisation, other KIs were added to the initial list through the process of snowballing (Foster, 1996; Denscombe, 1998; Black, 1999). Interviewees were either asked or volunteered the names of additional persons whom they believed could meaningfully contribute to the data collection process. One advantage of snowballing is that sponsorship facilitates access and encourages co-operation. A few senior managers facilitated access to recommended sources by emailing or telephoning the individual to arrange a meeting. The full list of those interviewed and the organisations to which they are affiliated is provided at Appendix XIV.

#### **4.4.2.3 The Interview Process**

Interview sessions commenced with a few introductory statements, where interviewees were reminded or informed of the nature and purpose of the research and of its potential benefits to the organization. In the DR, where some interviews were tape-recorded, permission was sought from the respondent prior to the start of the session.

Elaborating on the DR interviews, approximately one third of these were conducted in English. Interviewees in these sessions were mostly senior managers who had studied abroad and undertaken degree courses where English was the language of instruction. Interviewees showed a clear understanding of the questions, and provided responses which were free-flowing and comprehensible. For the remaining interviews with officials who had limited or no knowledge of English, I was assisted in these sessions by bilingual native Spanish speakers. These individuals acted as translators, posing the pre-translated questions from the translated interview guides and performing simultaneous translation of the interviewees' responses.

Across both cases, with regard to the questions asked, it was the managers at the top and middle organisational levels who were questioned on strategic issues such as the level of policy autonomy, inter-organisational relations with stakeholders.. Supervisors and junior staff were questioned primarily on operational issues. In essence, questions focused on matters about which it was felt the interviewee would have been able to report.

In order to ensure that I obtained historical information as well as a processual account of events, questions were asked in the present, past, as well as the future tense. For example, persons were asked how things were done in the past, how they are currently being done, as well as envisioned future plans. Questions were also asked about past, present and future attitudes in relevant areas. I asked respondents questions not only about their own knowledge, attitudes and behaviours, but also about those of other colleagues within the organisation. This provided an opportunity for respondents to disclose information without having to admit, for example, any misconduct or improprieties on their part.

Not all questions were used at every interview. Sometimes a selection was made based on the time granted by the interviewee, or as earlier stated on the particular area of responsibility of the respondent. This prevented a shifting from qualitative to survey-style interviewing to cover all of the topics, which could have impacted negatively on the quality of data collected. In cases where rich detailed information was being provided and I was unable, by the end of the session, to cover all of the relevant issues, a follow-up interview was requested and in all cases these were granted. There was also no rigid adherence to the original sequencing of questions. Where the respondent touched on a particular subject slated for later discussion, (s)he was permitted to speak on the topic, provided what was being said was relevant to the study.

Interviews typically lasted between one and two hours. At the conclusion of each interview, respondents were prompted by a request to provide any additional

information which (s)he felt might be relevant. This open invitation often yielded additional insights into the issues being investigated.

At the end of each day, data collected were transcribed verbatim and saved in MS Word documents. In the DR, where interviews conducted in Spanish were tape-recorded, the translated recorded version was cross-checked against the simultaneously translated data for completeness and consistency. As figure 4.1 shows, at this data collection phase, some data analysis was undertaken. This provided an opportunity to fill any missing gaps in information or to clarify issues where I noticed a lack of perceptual agreement in interview responses. Such differences were reconciled by going back to either one or both respondents to (dis)confirm the accuracy of the information provided.

#### **4.4.2.4 Documentary Analysis**

Prior to the field visits, I identified a set of documents and statistical data which I believed would have assisted in the process of data collection. A list containing the documents and statistical data being requested was emailed in advance to the four departments. Attached at Appendix XV is a copy of the list which was forwarded.

For the documentary review, use was made of a combination of open-published and restricted official state documents, along with private open-published documentary materials. Together these included Acts of Parliament, and other pieces of legislation and regulations; strategic plans and annual reports; internal guidelines and newsletters; evaluation reports produced by external consultants;

as well as newspaper articles (including news articles, editorials, columns as expressions of opinions and letters to the editor). In the DR case, whilst some documentation was in English, a number of documents, such as the legislation, study reports and internal newsletters were written in Spanish. These documents were translated by the officers who assisted in the translations during the interviews.

#### **4.4.3 DATA ANALYSIS AND REPORTING**

Eisenhardt (1989) refers to the huge chasm that often separates data from conclusions, because of the little space allocated to discussion of analysis. Bryman and Burgess (1994), in a similar vein, note the reluctance of qualitative researchers to lay bare the procedures associated with the analysis of data. The section discusses the process of data analysis and the method of reporting used for the study.

##### **4.4.3.1 Analysis of Case Data**

As already mentioned, a comparative case study approach is applied in the present study. By its very nature, the research generated a huge amount of data that needed to be sufficiently analysed using appropriate data analysis techniques.

So how does the qualitative researcher proceed with analysing data from multiple cases? Albeit there being no single right approach, clearly there is a need for some analytic strategy. Regarding the strategy used for data analysis, the

research questions and the conceptual framework were applied as the primary tools for guiding the analysis of the data. The initial task involved the development of a classification system to facilitate coding or data indexing. Figure 4.1 illustrates the replication strategy used during the data analysis process. Finding merit in the argument that 'initially each case must be represented and understood as an idiosyncratic manifestation of the phenomenon of interest' (Patton, 1990: 387), findings were first analysed and interpreted at the single-case level.

Examining in-depth first the Jamaican case, data collected were subjected to a within-case analysis. Using the devised coding system and starting with the printed interview transcript materials, the content of these documents was analysed and manually coded using the technique of pattern matching. Using MS Word, chunks of the coded text were electronically copied from interview transcript files and pasted with other items that fit under the same heading into an appropriate excerpt file. Care was taken to identify the documents from whence coded data were taken. A similar process was then used for case data from the documentary review.

Excerpt files were then printed for local integration (Weiss, 1994) of the information within the particular file. Interview data and data from the documentary sources were synthesised by a process of triangulation. Only when the evidence from the different sources corroborated each other did I consider there was a finding, and such information used as part of the study. This procedure was then followed by the inclusive integration (ibid) of case findings



from the various excerpt files, in order to report a single well-knit story with respect to the case.

This process of within-case analysis was then repeated for the Dominican case. Chapters five through nine of the thesis report findings from the single case analyses. Within case analyses were then followed by a cross-national comparison of the two cases in order to examine the effect of contextual and institutional factors and to explore joint and deviating patterns. Findings from the cross-case analysis are reported in chapter ten.

Also undertaken was a process of content analysis to investigate styles of legal drafting in both cases. Content analysis has a long history in social science research. Qualitative content analysis is a research method involving the subjective interpretation of the context of text data through the systematic classification process of coding and identifying themes or patterns. The method goes beyond merely counting words to examining language intensely for the purpose of classifying large amounts of text into an efficient number of categories that represent similar meanings (Weber, 1990).

As illustrated in figure 4.1, the process of data analysis concluded when I was satisfied that the study's research questions had been appropriately and sufficiently addressed.

#### **4.4.3.2 Report of Empirical Findings**

In reporting the study's empirical findings, again the research questions, theoretical propositions and theoretical framework were used as the basis for structuring the report. For each of the major issues investigated in the research – the rationale behind reform; the practice of bureaucratic autonomy; and the factors impacting on the practice of autonomy – I present under the appropriately headed chapters and sections my findings on these topics first for the Jamaican case, immediately followed by those for the Dominican case. This reporting structure, in my view, lends to better readability than other options which were contemplated. For example, it avoids a situation where, by breaking the larger issues into smaller sub-topics and repeatedly alternating between the two cases, the report comes off more like a ping pong game, detracting the reader from gaining a coherent picture of each case with respect to the main issues being investigated.

Included within the thesis are excerpts from interviews and documents, primarily as evidence for the various assertions being made, as well as to enliven the report. In quoting interview respondents, a decision needed to be taken on whether or not to edit selected statements. In this study, whilst some statements were edited as appropriate in order to make it easier for the reader to grasp the point(s) being made, care was taken not to alter the meaning of original statements either by changing words or by undertaking a more literate and pointed translation.

As a final point on reporting, the reader may notice that in my review of the literature dealing with factors impacting on the exercise of bureaucratic autonomy, I discuss in sequential order first the micro level factors, followed by factors at the meso and macro levels; whilst in my report of empirical findings this ordering is being reversed. The treatment of the issues in this manner is conscious and deliberate. In Part I of the thesis, the discussion was structured to underscore the traditional approach used within organisational analyses whereby consideration is usually given to the micro and meso level factors, at the expense of examining the potential impact of factors at the broader macro level. I therefore presented these traditional arguments, before introducing what I consider to be my special contribution to the topic with the subsequent incorporation of broader institutional factors. In Part III of the thesis, findings on the impact of macro level factors are first reported, in order to demonstrate the extent to which these factors work their way through to the meso and micro levels of bureaucratic functioning.

#### **4.5 REFLEXIVITY: EVALUATING THE RESEARCH DESIGN AND RESEARCH PROCESS**

Hailed as one of the primary methodological innovations, reflexivity, the 'project of examining how the researcher and inter-subjective elements impact on and transform research' (Finlay, 2003: 4), has become an important part of the evolution of qualitative research. Though not always referred to explicitly as reflexivity, the concept is best understood as the researcher reflecting on the quality of his/her research; for example by evaluating research decisions,

methods and outcomes, making explicit any biases which may have crept into the study; as well as by examining the impact of personal presence, position, and perspective.

Although the usual caveats with respect to perceptual data apply, considerable care still needs to be taken to attend to concerns of measures such as credibility, transferability, dependability and confirmability<sup>39</sup> that will adequately (if not absolutely) affirm the trustworthiness of qualitative inquiry (Lincoln and Guba, 1985). In the remainder of this section, the quality of the present study is examined.

#### **4.5.1 MEASURES AND CONSTRUCT VALIDITY**

Here the focus was on assessing the degree to which correct operational measures were developed for the constructs investigated in the study. Both the autonomy index adopted and the theoretical framework developed were based on previous empirical work. Given the attested validity of the autonomy measure adopted by the study from a previous empirical work which was very similar in its focus, it is safe to argue the high level of construct validity of the measure of bureaucratic autonomy.

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<sup>39</sup> Lincoln and Guba (1985) identify and define a set of post-positivist criteria for establishing the trustworthiness of findings from qualitative studies as follows: credibility (the degree of truthfulness of findings as perceived by those observed or interviewed and within the context of the study); transferability (the extent to which findings can be transferred to other settings); dependability (the extent to which consistent findings would emerge, should the research be carried out again) and; confirmability (the provision of evidence that corroborates the findings, such evidence gained directly from subjects and the research context).

Unlike the fairly comprehensive nature of the autonomy measure, this author acknowledges the limitations of the theoretical framework for measuring influences on autonomy in its coverage of only some of the most salient and relevant autonomy conditioning factors. Parsimony in choice of variables means that as an indicative schema, this map of the territory being investigated represents only a slice of reality, as opposed to a full understanding or complete picture of the complex conjunction of factors that might produce opportunities for or constraints on discretionary action.

Reflecting on the potential impact of the study's use of the KIM, already discussed is the strategy used to minimise the introduction of errors through respondent selection. Also at issue, and equally important, was the potential introduction of systematic or random errors through KIs' provision of incorrect or biased information. Phillips (1981) notes that researchers using the KIM often ask informants to perform complex tasks of social judgements about macro-level phenomena, and/or to perform aggregations over persons, tasks, organisational sub-units or event, which may produce unreliable results.

Considering the possibility of the introduction of systematic errors into the study, my manner of conduct of the interviews as well as what I perceive as my influence on the research site assisted in minimising such distortions. In order to engender trust and cooperation, and to obtain accurate and detailed information, interviewees were assured prior to the start of interviews of the confidentiality of their responses. Acceptance of such assurance resulted in the majority of interviewees reported on the full spectrum of perceived organizational functioning

– including the good, the bad, and the ugly – by so doing, Focusing on potential randomised errors introduced by individual perceptual and cognitive limitations, the use of multiple informants allowed for the cross-checking of different people's views and judgements.

Yet another factor considered with respect to measurement validity relates to the problem of 'linguistic equivalence' (Warwick and Osherson 1973:30). Whilst the technique of back-translation<sup>40</sup> would have allowed for greater rigour, lack of time prohibited cycling through such a process. The fact that use was made of bilingual native Spanish speakers to translate the questions from English to Spanish, and that during the interview process, interviewees demonstrated a clear understanding of what was being asked by providing free-flowing responses that appropriately addressed the questions, leads me to conclude the achievement of linguistic equivalence of measure.

#### **4.5.2 CREDIBILITY**

'Qualitative analyses can be evocative, illuminatingly masterful – and wrong. The story well told as it is, does not fit the data' (Miles and Huberman, 1994: 262)<sup>41</sup>. Conveyed within this statement is the notion that when the researcher writes for publication, or in cases such as this, for assessment for the award of a higher degree qualification, (s)he faces the task of conveying to the reader the credibility of his/her findings – i.e. the plausibility of inferences which are being drawn from

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<sup>40</sup> The technique of back-translation involves iterative translations from English to Spanish, Spanish to English, then again from English to Spanish until all discrepancies in meanings are clarified or removed.

<sup>41</sup> Note that this is a view which might not necessarily be shared by some critical non-positivists.

the study. The qualitative investigator has to devise means of ensuring that the external observer is able to follow the process of reasoning applied at the start of the research through to the study's presented conclusions.

In this empirical work, various precautionary measures and strategies were employed to enhance the research's credibility. At the data collection phase, strategies were used to safeguard against errors introduced by use of the KIM. During data analysis, use of pattern matching allowed for the gathering of evidence from which valid and logical inferences were drawn. The convergence of this evidence, as witnessed during the process of triangulation of the various data sources, further increases the probability of the credibility of the study's findings and interpretations. In the reporting phase, provision of information that is rich and thick in description has allowed for the establishment of a thread or chain of evidence that runs from the study's initial research questions, to assumptions and design choices, to the specific data uncovered, and finally, to the results and conclusions.

#### **4.5.3 TRANSFERABILITY**

Given the highly context and case dependent nature of qualitative findings - experiences and meanings largely bound to the time, people and setting of the particular study - most qualitative researchers rarely make claims about transferability (Baxter and Eyles, 1997). Likewise, this author makes no claim about the transferability of the findings of this research to contexts outside of the study. The most being argued here is that the use of a design based on

comparative case research has reduced the risk of reporting idiosyncratic events, thereby increasing the likelihood that findings will transfer. My provision of a detailed thick description, for example of how hypotheses and constructs were developed, should assist a future researcher hopeful of making such a transfer, in deciding whether or not such an act should be contemplated. Following the arguments earlier highlighted about analytical generalisation, I argue for the transferability of the conceptual framework introduced in the study, which may be used in future research on this topic.

#### **4.6 CONCLUSION**

This chapter presented the study's design and methodology. Provided was the rationale for the use of a comparative case method that draws on the qualitative approach to data collection and data analysis. The methodology employed will allow for a peering into the black box of political decision-making, social actions and interactions that permeate bureaucratic functioning. This then makes it possible to explain the 'why' and 'how' of reforms and the practice of autonomy. Also presented were the two frameworks separately devised to measure the nature and extent of autonomy in practice, as well as influences on the exercise of bureaucratic discretion.

Regarding the nature and extent of autonomy practiced within the focal organisations, the analysis will draw on a number of issues discussed in chapter two, including not only the formally ascribed amount of autonomy granted to the Revenue, but also their capacity to act and to make use of informal means to



break free of institutional constraints. Analysis will focus on the relative importance of the difference dimensions of autonomy, as well as the dynamics surrounding autonomy that may result in a waxing and waning of discretionary space. Focusing on the influences on autonomy, the study will investigate a number of outcomes, including the relative impact of the three identified levels of environment, highlighting as appropriate the specific autonomy dimension affected by each of the factors. The chapter concluded with the author's introspection on the overall quality and rigour of the research.

**PART III: THE PRACTICE OF BUREAUCRATIC  
AUTONOMY: CASE STUDY FINDINGS, DISCUSSION  
AND CONCLUSION**

## **CHAPTER 5**

### **TAX ADMINISTRATIVE REFORMS: RATIONALE & PROCESSES**

#### **5.1 INTRODUCTION**

This chapter presents answers to the first research question posed in the thesis, concerning the rationale underlying fiscal administrative reforms and choice of institutional forms. Also provided, for each of the cases, is a brief summary of the process of reforms, actions undertaken and actions omitted. The effects of such omissions and actions on capacity for autonomous functioning will be seen in the later analysis.

#### **5.2 TAX ADMINISTRATIVE REFORMS IN JAMAICA**

##### **5.2.1 THE RATIONALE BEHIND REFORM**

During the 1980s the GoJ, as part of a Jamaica Tax Structure Examination Project, embarked on a comprehensive programme of tax reform, the central economic objective of which was the achievement of a high and stable level of growth and employment creation. Whereas, at the time, the primary focus was on good tax policy, the government recognised that reform objectives could not be achieved without the capacity for their proper implementation. The problem of an inadequate tax administration therefore now begged specific attention. It was from this genesis that the Jamaican government entered in 1994 into a loan agreement with the International Bank for Reconstruction and Development

(hereafter the World Bank or the Bank) for the co-financing of a Tax Administrative Reform Project (hereafter TaxARP or the Project) that was to focus exclusively on the administrative dimension of tax reform. The project would be implemented over a six-year period at a total estimated cost of US\$42.0 million.

TaxARP commenced with an in-depth study of the tax administration system by the GoJ and the World Bank. Note that the Customs Department was not originally included in TaxARP. Customs modernisation, which commenced in late 1999 under a separate five-year World Bank sponsored 'Customs Modernisation Programme' (CMP), proceeded as part of the broader 'Jamaica Public Sector Modernisation Programme', and was then later included as part of TaxARP.

Figure 5.1 illustrates the pre-reform organisational structure of tax administration in Jamaica.

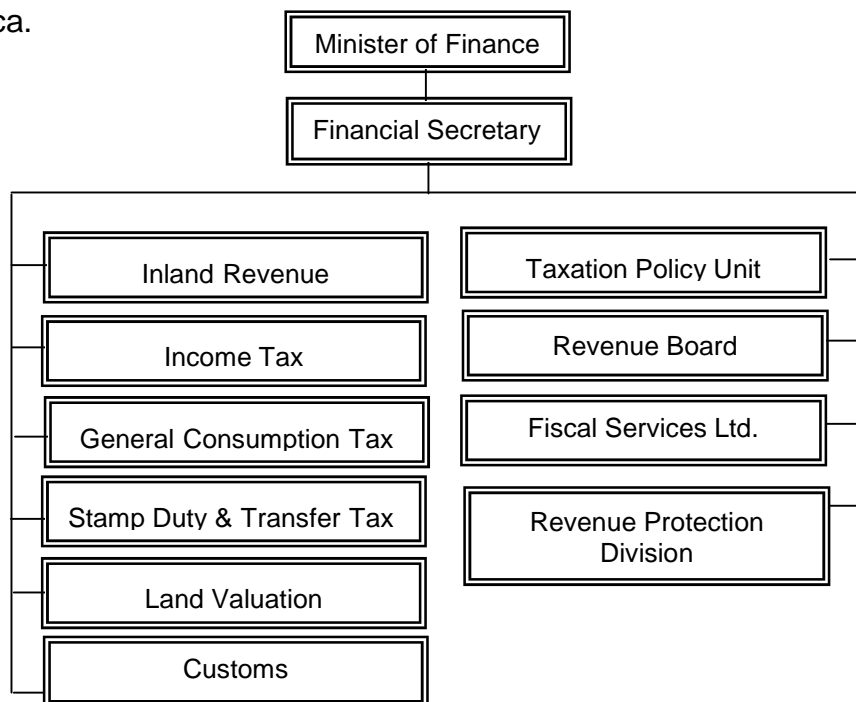


Figure 5.1: Pre-Reform Organisational Structure of Tax Administration

Line organisation was divided into six departments – Inland Revenue, Income Tax, General Consumption Tax, Stamp Duty & Transfer Tax, Customs, and Land Valuation - with four other units which undertook functions related to tax administration reporting directly to the Financial Secretary.

TaxARP's Project design was based on a multi-dimensional diagnosis of shortcomings in a number of areas, namely the organisational structure of the tax departments; the legal framework of tax administration; voluntary compliance; the control of tax evasion and tax collection; management systems; and computerisation. The analyses, conclusions and proposed reforms were published in May 1994 in the 'Jamaica Tax Administration Reform Project - Staff Appraisal Report (hereafter SAR or the Report).

According to the Report's main findings, tax administration suffered from three main inter-related problems that led to major constraints in revenue mobilisation, as illustrated in Figure 5.2.

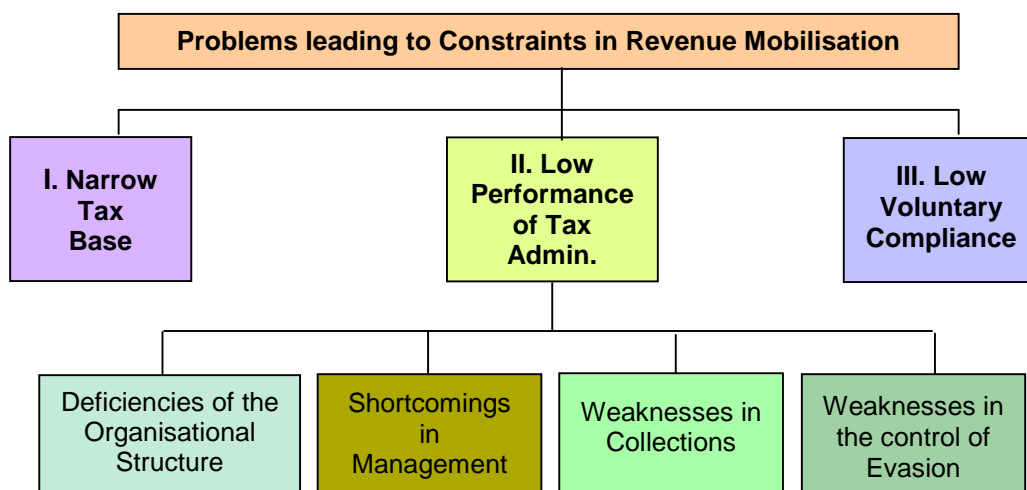


Figure 5.2: SAR Findings of the Major Problems in Tax Administration

Problems stemmed largely from:

- a) *narrowness of the tax base*, with a significant gap between actual and potential revenue yield remaining a perennial problem;
- b) *underperformance of the tax administration* attributed to structural organisation on the basis of tax types and inherent problems of duplication, limited management capacity as well as capacity for revenue collection and the control of tax and customs evasion; and
- c) *poor levels of voluntary compliance*, occasioned by high transaction costs involved in the payment of taxes and weak enforcement of tax laws.

According to SAR (1994:12), these problems “reinforce[d] each other negatively and led to a downward spiral of ineffectiveness, inefficiency and inequity of the overall system”. The Report thus went on to explicitly outline the value proposition behind the reform:

“In order to make the requisite investments for providing social services and building the economic infrastructure needed for private sector development; reduce the debt burden; offset the anticipated declines in the existing tax base; and allow eventual reduction of tax rates, GoJ needs to improve revenue collection substantially. For this purpose, the efficiency and effectiveness<sup>42</sup> of tax administration needs to be improved” (ibid:14)

TaxARP was to represent an integrated approach to tax reform and modernisation, incorporating several features of effective and efficient tax administration systems. Figure 5.3 illustrates the recommended multi-dimensional strategy to achieve a turnaround in the chronic problems facing tax

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<sup>42</sup> Whereas effectiveness refers to the way the revenue is collected (fraud, fairness, compliance etc.), efficiency refers to the resources spent on each unit of tax collected.

administration. The 3-pronged approach would focus on broadening the tax base, improving the efficiency and effectiveness of tax administration, as well as on the facilitation of voluntary compliance.

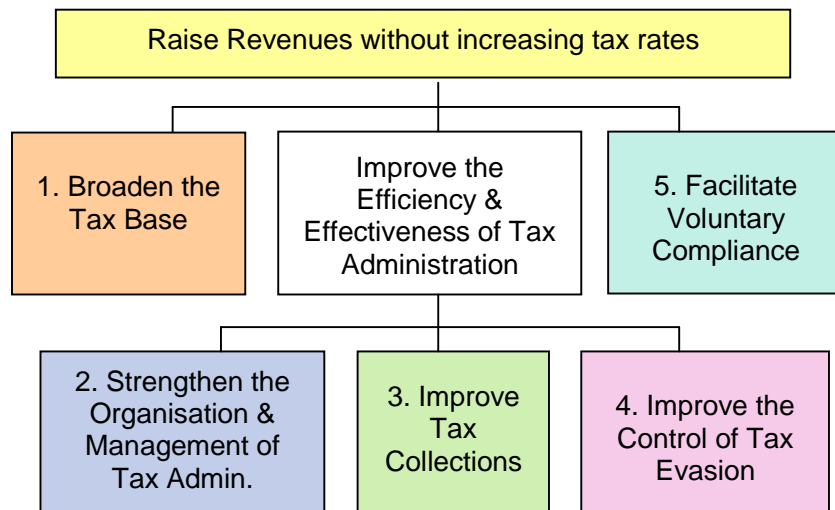


Figure 5.3: The Proposed Multidimensional Strategy for Reform

Immediate project outcomes such as the simplification of work processes, improved tax information systems, and reduced administrative costs would allow not only for the financing of budgetary needs, but most importantly for an eventual reduction of tax rates which would spur private investment.

Between 1999 and 2002, the GOJ, the World Bank and other donors also launched a separate modernisation project for the Customs Department. Unlike TaxARP's main findings, internal assessments revealed that the problems plaguing the Customs administration stemmed mostly from a primary reliance on manual paper-based systems which not only resulted in inefficiencies, but provided fertile ground for fraud and inconsistencies due to the lack of accountability. According to senior Customs personnel, reforms were being

implemented against the background of an estimated JA\$4b lost in 1999 as a result of fraud and corruption, and the need to better guard against such revenue shortfalls. The rationale, therefore, behind Customs reform was to enable the CD to more efficiently, effectively and also more transparently process and facilitate the movement of goods and passengers. Government in a press release in the early phase of the reform publicly acknowledged its banking on reforms to help curb corruption within the system, emphasising the critical attention that would be paid to the issue of integrity during the process of modernisation (Jamaica Observer, November 15, 2001). A 'Six-Point Modernisation Plan' therefore focused on areas such as a streamlining of operations, improvements and automation of processes, managing for results, as well as the enhancement of voluntary compliance through the effective enforcement of Customs laws.

Figure 5.4 illustrates the resulting proposed structure for reforming the administration of taxes in Jamaica. The restructured Tax Administration would consist of seven departments, newly created or reoriented, to make them more specific to functions as opposed to the type of taxes administered.

Recognising that physical reorganisation alone was insufficient for the sustainability of successful reforms, the Bank included as part of its initial loan agreements a few conditionalities regarding loan disbursements. Under TaxARP, conditions included, for example, agreement by the GoJ to the review of the compensation structure in tax administration. Under both TaxARP and CMP, the development of a legal framework capable of effecting modernisation plans, followed by the necessary presentation to Parliament of amendments to the



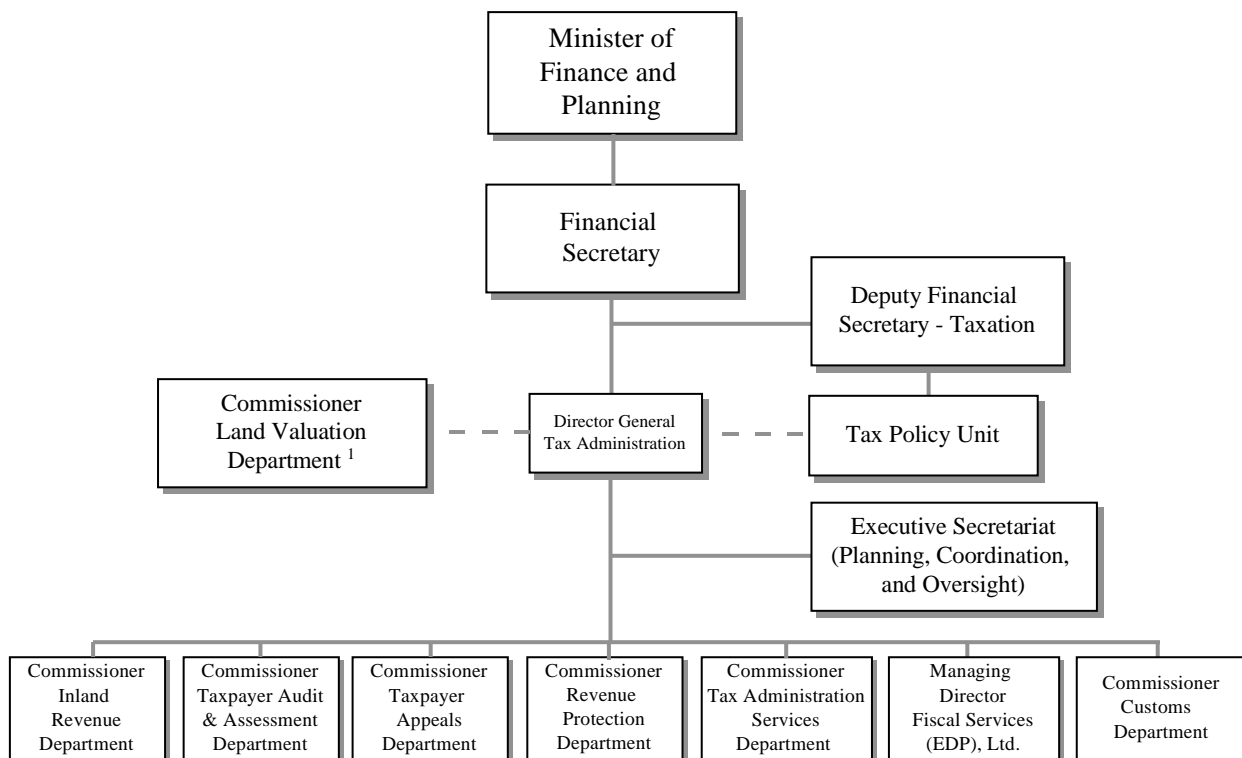


Figure 5.4: The Jamaica Tax Administration - Proposed Organisational Structure

administrative and procedural provisions of tax laws, as agreed by the Bank, were other conditions of loan disbursement. Apart from conditionalities, also worth mentioning is the set of operational recommendations – a set of key organisational and management concepts, initiatives, practices and outcomes - which the Bank argued should be made indispensable parts of the overall framework.

One of the most important operational recommendations was for the empowerment of management and staff within the restructured tax departments. The revenue departments should be delegated sufficient authority to perform their most important functions, in return for strict accountability for achieving pre-determined performance targets. Tax Commissioners should not only be given authority to execute their own budget allocations, delegation of authority should

also be secured for major aspects of personnel administration and management now controlled by central institutions. In the Bank's view, the newly-reformed institutions, operating with a modern resource base and greater autonomy would be able to significantly improve revenues as well as the quality of services provided to taxpayers.

Worth mentioning at this stage is the extent to which conditionalities and recommendations were followed, in order to later gauge the impact of earlier decisions on reform processes and reform outcomes. The World Bank's blueprint model for reform was not accepted in its entirety, but adapted to suit what government deemed to be the peculiarities and idiosyncrasies of the Jamaican situation. Figure 5.5 illustrates the actual implemented tax structure.

Continuity with the past saw ongoing direct lines of reporting between the Financial Secretary and entities such as Fiscal Services Ltd (the informatics arm of government) and the Revenue Protection Department (which assisted the Revenue in compliance and enforcement). Such continued structural arrangements spelt huge implications for the Revenue's capacity to act autonomously, due to resource dependency and the quality and timeliness of services provided by such entities within the focal organisation's technical or task network environment.

Regarding structural change, the administration of both domestic and international taxes and support for tax administration would be undertaken within a newly constituted umbrella Jamaica Tax Administration that incorporates the

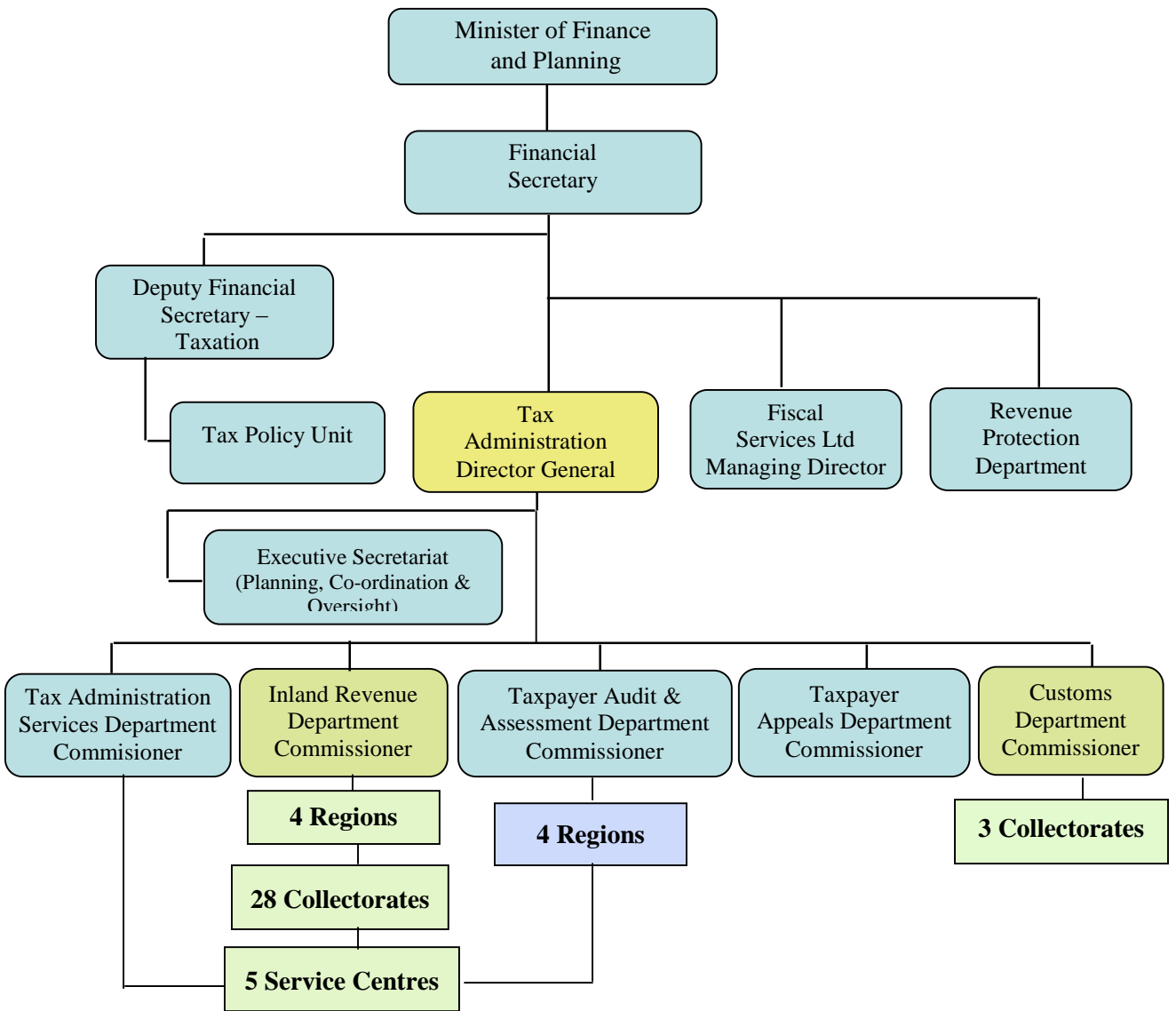


Figure 5.5: The Jamaica Tax Administration - 1999 Implemented Structure

Inland Revenue, the Customs, the Taxpayer Audit and Assessment, the Tax Administration Services, and the Taxpayer Appeals departments. More important, from the point of view of this research, are those deviations which from the outset spelt implications for autonomous bureaucratic functioning. Contrary to global trends in fiscal reforms where newly modernised revenue administrations, by virtue of the enabling legislation, are structurally divorced from central authority, the GoJ did not follow this route. Instead of being placed at arms-length

from central government and empowered to a level advocated by the World Bank, the Jamaica Tax Administration was legally constituted as a directorate within the Ministry of Finance with less formally granted autonomous powers.

Such decision prompted heated debate during the reading of the Bill in the Lower House. According to the Opposition Jamaica Labour Party Shadow Minister of Finance, government's piecemeal adoption of reform was in sharp contrast to the general approach of the World Bank, which considered the introduction of a substantial degree of autonomy in tax administration as essential to the long term success of reform. Shaw opined:

'One would have hoped that the government would have opted for the more autonomous approach indicated by the World Bank, as a means of establishing a tax administration machinery capable of meeting the challenges of the future, instead of attempting to establish the flawed arrangements indicated in this Bill...[A]ll around the public sector bureaucracy we are giving more autonomy...last week we gave the National Youth Service statutory body status. We are changing some agencies from statutory body to executive agencies, but the biggest thing in town, taxation, does not have the autonomy'.<sup>43</sup>

### **5.2.2 THE PROCESS OF REFORM**

To assist with the design and establishment of the Tax Administration (TA), a group of expatriate Consultants (hereafter the Group or the Consultants), were hired to analyse existing systems and processes, to make suitable recommendations, and to guide the transformation process.

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<sup>43</sup> Comments made during the reading of the Bill 'An Act to Amend the Revenue Administration Act'.

TaxARP implementation, which was undertaken in three phases, proceeded under the guidance of three high level documents – a ‘Master Plan’, a ‘Broad Strategic Plan’ and a detailed ‘Transition Plan’. Whilst Phase I of the Project focused on the identification of specific tasks required to achieve objectives under four of the five project components, Phase II involved the conduct of various assessments – manpower audits, training needs analyses, job evaluations and job classification – that would feed into project implementation.

Figure 5.6 illustrates the institutional arrangements that guided Phase II of the Project. To provide overall leadership for the reform process, a special Project Co-ordination Unit (PCU) was established, comprising a Director and Deputy Director and five senior members of staff seconded from the different revenue departments. The PCU fell under the supervision of a high level Steering Committee comprising Deputy Financial Secretaries within the Ministry of Finance, Commissioners of the revenue departments being restructured, as well as other Commissioners and Heads of Departments<sup>44</sup>. The Steering Committee, which provided executive management oversight for the project, met on a monthly basis to share and discuss proposals, review progress and resolve problems. Consultants reported to the Chairman of the Committee through the PCU Director.

Similarly for the Customs Modernisation Programme, project design and execution also involved the use of an expatriate group of Consultants. Oversight

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<sup>44</sup> Membership of the Steering Committee also included the Commissioners of Customs and Land Valuation, the Chief Parliamentary Counsel, the General Manager of Fiscal Services Ltd., as well as the Director of the Revenue Protection Division of the Ministry of Finance.

**GOVERNMENT OF JAMAICA/WORLD BANK**  
**Tax Administration Reform Project (TaxARP) Phase II Organisation Chart**  
**September 1995-May 1996**

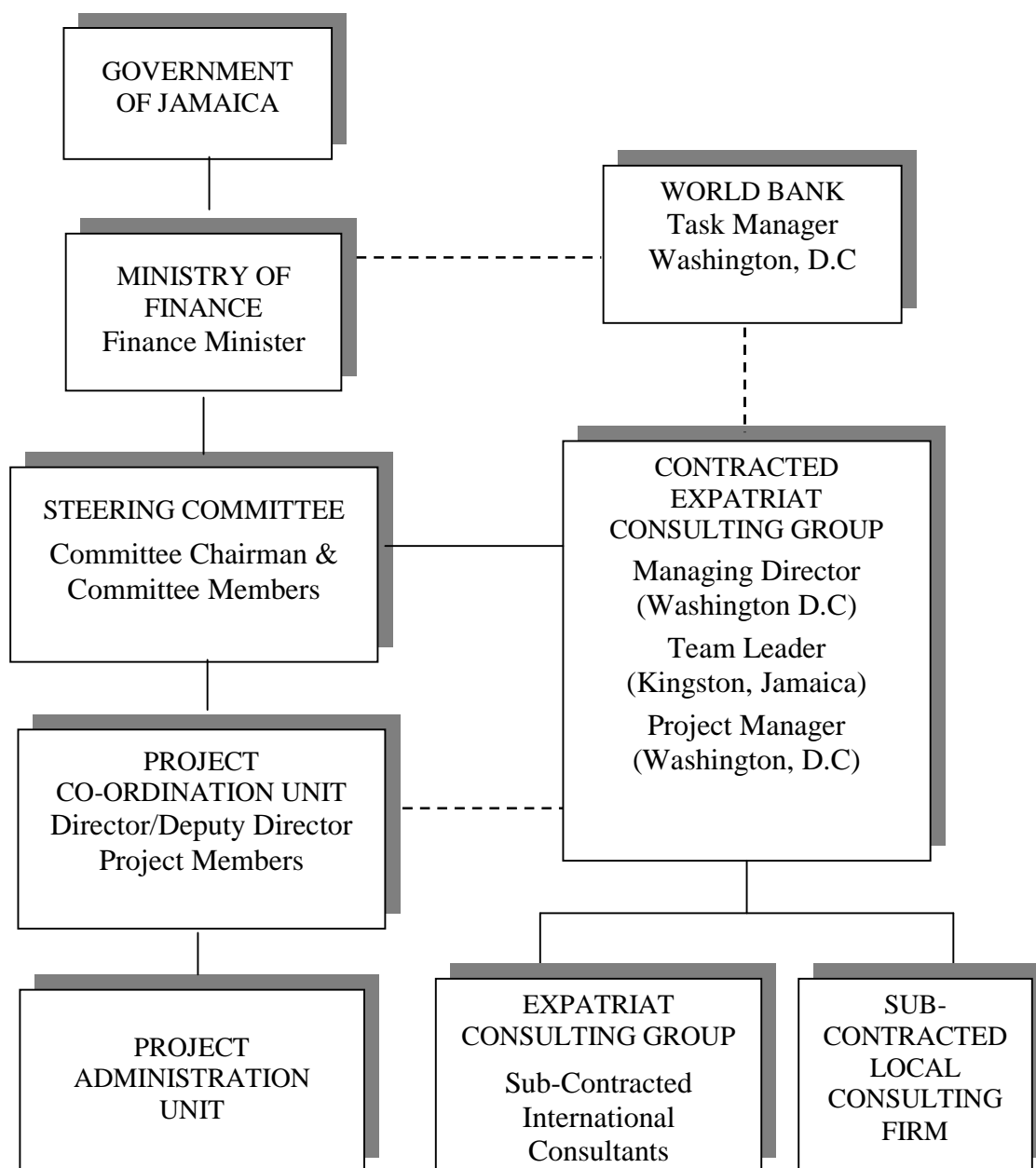


Figure 5.6: TaxARP Phase II – Project Organisation Chart

Source: Adapted from the Barents Group 1996(a):2-2

of this Project was the responsibility of a Steering Committee which comprised the Director General of the Tax Administration, the President of the Jamaica Civil

Service Association, as well as representatives of Fiscal Services Limited, the Cabinet Office, and the Revenue Protection Department.

For Phase III of the Project, the implementation of the Master Plan, activities included recruitment and selection, the implementation of management systems, the strengthening of important functions like internal audit and data processing, as well as the development of a computerised MIS to facilitate the exchange of information amongst the tax departments. Contrary to initial plans, the Consultants were not involved in this final phase. Members of the revenue departments worked without any external specialist technical assistance dealing with the task of reform implementation.

Regarding the recruitment of staff to the newly created positions, all posts within the abolished revenue departments were declared redundant and transferred to the MoF. Members of staff of each department were required to apply and compete for positions within the newly created TA. Most of the persons who headed the now defunct organisations were re-selected to head or hold senior positions within the newly established organs. The Customs selection exercise resulted in approximately 1200 of the original staff being employed to the department and about 240 persons being referred to the Office of Services Commission for either redeployment elsewhere in the civil service or for retirement. As later shown, institutional memory loss was to later impact negatively on internal levels of knowledge and expertise and by extension on the capacity of persons to perform delegated roles.

The general conclusion drawn about the process of reform in both projects is that, although a number of strategies were put in place on paper to ensure the smooth implementation of the TA, in a number of areas the actual process did not proceed as smoothly as anticipated. Ineffective project oversight undertaken by already overworked senior personnel, poor internal communications, and a general lack of adequate preparation of staff for change were only some of the shortcomings highlighted. Of particular interest was the charge that TaxARP implementation focused primarily on legislative issues, possibly to the detriment of other areas also critical to successful reform outcomes.

### **5.3 TAX ADMINISTRATIVE REFORMS IN THE DOMINICAN REPUBLIC**

#### **5.3.1 THE RATIONALE BEHIND REFORM**

Two major compelling reasons lay at the root of government's decision to undertake administrative reform of its functions for the collection of domestic and international taxes. During the early 1990s, the Dominican Republic embarked on a programme of liberalising its trade policy regime, substituting its old protectionist politics for measures that would induce businesses to be more competitive in the new world environment. The main aim of market liberalisation was to promote, facilitate and consolidate the DR's integration in the international economy.

In order to achieve this objective, Free Trade Agreements between the DR and the Central American Common Market (CACM), as well as between the DR and the Caribbean Community (CARICOM) were signed and went into force in



October 2001 and December 2001 respectively. In 2004, the DR joined five Central American countries (El Salvador, Guatemala, Nicaragua, Honduras and Costa Rica) to conclude a Free Trade Agreement with the U.S.: the United States – Central America Free Trade Agreement – Dominican Republic (CAFTA-DR)<sup>45</sup>, which for the DR took effect from March 1, 2007. The Agreement's removal of barriers to trade and investment in the region resulted in an assurance of the DR's preferential access to the world's largest economy, as well as new market access for approximately 80% of U.S. consumer, industrial and agricultural products that would immediately enter the DR free of duty.

Responsibilities contracted in the CAFTA-DR pact focused on a number of areas, particularly on the administering of customs procedures. Provisions in the Agreement on customs administration and trade facilitation focus towards achieving greater efficiency, enhanced transparency, heightened predictability, as well as improvements in express delivery service. Article 5.2 dealing with the release of imported goods mandates that each signatory to the Accord shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the parties. Customs authorities shall adopt or maintain procedures that provide for the release of goods within a period no greater than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours. A separate expedited customs procedure should be implemented for the clearance of express shipments from the port of entry within six hours of submission of all necessary documents.

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<sup>45</sup> The DR was added to the Agreement in August 2004.

At the time of the DR's signing of the Agreement, the situation on the ground paled in significance to the new requirements. Paperwork to process containers with duty free merchandise took 12 days on average; 15 days being the typical timeframe for the clearance of containers holding duty payable goods. The DR government and its Customs department therefore faced the serious and urgent challenge of upgrading existing provisions for customs processing of imported goods.

The second reason underlying administrative reform likewise relates to events on the macroeconomic front. In August 2004, in the wake of the country's deep financial crisis, the new Dominican Liberation Party (PLD) government undertook a series of measures to stabilize the economy and regain a path economic of growth. In January 2005, an economic program was implemented, backed by a new 28-month Standby Arrangement (SBA) with the International Monetary Fund (IMF). Embodied within the SBA were conditionalities typical of loan agreements approved by international donor agencies, including provisions relating to the achievement of fiscal targets. Given, as a result of entry into CAFTA-DR, the imminent gradual reductions in income from customs duties, it became clear the need to fortify collections from domestic sources of revenue, in order to achieve the fiscal targets set in the SBA.

Whereas the focus on customs processing and the functioning of the DGA took centre stage as a result of CAFTA-DR; the functioning of the DGII and its capacity to contribute significantly to the attainment of fiscal targets

simultaneously became of paramount importance. Evident was the need for flexible dynamic institutions capable of responding to the rapidly changing and challenging circumstances. Pressures on government started to mount, both at the international and national levels.

At the international level, the United States government and the IMF each issued a requirement calling for the passage of two separate pieces of legislation, each law to grant formal autonomy to the two state revenue departments. The U.S government's mandate formed part of the requirement for the implementation of the CAFTA-DR Accord; whilst for the IMF, the requirement was a guarantee for meeting fiscal objectives, as well as for continuing with the SBA. These were mandates which, at the national level, received the full backing and support of a number of private sector organisations such as the National Business Council, industrialists and Dominican importers who felt that autonomisation was necessary in order to permit the revenue agencies to create and implement the type of technical processes needed to facilitate the free flow of legitimate trade and commerce.

In 2006, government responded to these externally imposed requirements by drafting a set of laws that would permit the decentralisation of administrative decision making to its state departments responsible for the collection of taxes and customs duties, and having these laws approved by Parliament. In April 2006, the proposed pieces of legislation or 'Autonomy Bills' were approved by unanimous vote of the 80 deputies present at Congress, and in June 2006, again unanimously, by the Dominican Senate after two readings. On June 19, 2006,

President Leonel Fernández signed into effect Laws 226-06 and 227-06 which respectively made the DGA and the DGII semi-autonomous revenue agencies. According to a statement made by the Chamber of Deputies reported in the April 5, 2006 Dominican Today newspaper, the bills rendered the Dominican tax system adequate for entering the Free Trade Agreement. They served the purpose of making revenue collection more efficient, diminishing administrative expenditures generated by duplicated functions; as well as the purpose of simplifying customs and tax collection procedures. The agencies would continue to function as separate institutions.

### **5.3.2 THE PROCESS OF REFORM**

From the date of promulgation of the laws, a transitory period of 180 days was provided for the revenue agencies: (a) to develop the necessary regulations of internal operations that would give effect to the laws, and (b) to devise a restructuring plan that would bring about improvements in technical processes and administration. Each agency contracted the services of an external private sector consulting firm to work directly alongside its organisation's senior management staff to undertake a number of critical tasks. These included the conduct of an evaluation of existing personnel, the defining of policies that would permit the rational use of human resources, as well as the development of a structure and processes appropriate for operation as a decentralised entity. In addition, in order to meet IMF requirements, as well as restructuring stipulations set by the Free Trade Agreement with the United States, the DGA embarked on

a programme of retrenchment of some 2,500 of its workers over the 7-month period following the promulgation of Law 226-06.

#### **5.4 CONCLUSION**

This chapter presented findings on the value propositions or reasons underlying the implementation of revenue administration reforms in the two cases, as well as insights into the reform process. Differences between the two cases are evident both in terms of the primary goal of reform, as well as in the degree of control over the final shape and character of reform outcomes.

In Jamaica, tax administrative reforms can best be understood as a response to crisis – government’s dissatisfaction with the performance of revenue collection, especially in the face of fiscal deficits and rising public expenditure needs (as outlined in chapter one). Revenue therefore remained central to fiscal administrative reform efforts, the means of attainment through improved efficiency, effectiveness, transparency, integrity, as well as equity through a broadening of the tax base. Undoubtedly, the most significant change was the rationalisation of the structure and organisation of tax administration.

In the Dominican Republic, the need for tax administrative reforms can best be understood in the context of economic developments that took place in the country during the early 1990s. Liberalisation of the DR’s economy and the expectant boom in international trade as a result of entry into the CAFTA-DR Agreement occasioned the need for an emphasis on trade facilitation, with a focus on efficiency, heightened predictability, transparency, and quality service

delivery. Revenue mobilisation, in the first instance, was therefore less prominent in terms of the primary motive for reform. Anticipated loss of revenues from market liberalisation as well as entry into a Standby Agreement with the IMF led, in addition to the initial focus on efficiency, to a concern with the effectiveness of revenue collection as a safeguard for ensuring the achievement of fiscal targets. The need for formidable institutions and the limited likelihood that outcomes being sought could have been achieved under existing arrangements resulted in significant operational changes in the form of wide-ranging discretionary powers being formally granted to the two revenue collecting institutions.

In both cases, donors played a role in the development of the fiscal administrative reform agenda, albeit with differing levels of influence. Whilst in the DR, the trajectory of reform was heavily influenced by the donor and efforts to satisfy donor conditionalities and other external pressures, in Jamaica there was relatively less of a western influence in terms of a wholesale adoption of the model put forward. Government decisions were a function of the dependency and power relations that existed between each country vis-à-vis the donor agency. Whilst Jamaica benefitted from the technical knowledge and expertise provided through technical assistance from the donor agency during the planning but not in the actual implementation phase of reform, the Dominicans opted for a go-it-alone strategy, relying on the expertise of local public administration consulting firms to devise policies and implement various strategies.

The following chapters present findings which show, for example, how half-hearted reforms, donor influence, and the benefits of technical expertise during

the implementation phase of reform determined the amount of space allocated for bureaucratic discretionary decision-making and capacity to act on decision-making competencies.

## **CHAPTER 6**

### **BUREAUCRATIC AUTONOMY IN PRACTICE: THE JAMAICAN CASE**

#### **6.1 INTRODUCTION**

This chapter examines the nature and extent of *de jure* or formal autonomy granted by law under the various revenue and public service laws and regulations; along with the *de facto* (or actual) and informal autonomy exercised in practice by the two focal organisations within the Jamaican case study. Also discussed is the extent of informal autonomy, meaning those informal strategies and practices employed by the agencies to escape bureaucratic constraints. To allow for a historical treatment of the issue of reform, the organisations are examined on the basis of their pre- and post-reform situations, with differences between local organisations being highlighted as appropriate. Because these organisations operate within the framework of the national governmental system and are part of the general civil service apparatus, it is expected that, though some minor differences may exist, huge disparities between their situational circumstances is highly unlikely. Detailed cross-country comparisons are reserved for Chapter 10. Findings are reported under each of the autonomy dimensions identified in Chapter 4. Linked to Figure 4.4, Table 6.1 serves as a reminder of the benchmark criteria being used within each of the dimensions to describe and later compare relative degrees of autonomy.



<b>Dimension of Autonomy</b>	<b>Reform Design Feature</b>	<b>Description of Criteria</b>
Legal Autonomy	<ul style="list-style-type: none"> <li>• Legal Basis</li> <li>• Legal Personality/Character</li> <li>• Patrimony</li> </ul>	<ul style="list-style-type: none"> <li>• Legal basis on which entity was created</li> <li>• Relationship to central government machinery</li> <li>• Ability to own assets and create liabilities</li> </ul>
Structural Autonomy	<ul style="list-style-type: none"> <li>• Governance Framework</li> </ul>	<ul style="list-style-type: none"> <li>• Governance Model</li> <li>• Appointment of Agency Head</li> <li>• Reporting Relationships (Clarity of Lines of Responsibility)</li> <li>• Role and responsibilities of key leadership personnel</li> </ul>
Financial Autonomy	<ul style="list-style-type: none"> <li>• Funding Regime/Financing Mechanism</li> <li>• Transfer/Release of Funds</li> </ul>	<ul style="list-style-type: none"> <li>• Source of funding</li> <li>• Ability to extend funding</li> <li>• Whether automatic or non-automatic</li> </ul>
Policy Autonomy	<ul style="list-style-type: none"> <li>• Controls over policy implementation</li> </ul>	<ul style="list-style-type: none"> <li>• Controls over quantity and quality of outputs; over performance objectives/performance targets</li> <li>• Extent of freedom of choice in selection of policy instruments (programmes , (sub) processes, procedures, strategies, and initiatives) to achieve performance objectives</li> </ul>
Managerial (Financial Management) Autonomy	<ul style="list-style-type: none"> <li>• Financial administration and accounting controls</li> </ul>	<ul style="list-style-type: none"> <li>• Degree of control in areas such as budget execution, asset management/asset disposal</li> <li>• Budget flexibility</li> <li>• Controls over financial management &amp; accounting processes and procedures</li> </ul>
Managerial (Human Resources Management) Autonomy	<ul style="list-style-type: none"> <li>• Ownership, control &amp; oversight of the HR system at two main levels: <ul style="list-style-type: none"> <li>○ Strategic HRM</li> <li>○ Operational HRM</li> </ul> </li> </ul>	<p><i>Strategic HRM:</i></p> <ul style="list-style-type: none"> <li>• Controls over determination of HR policy in areas such as establishment levels, levels of remuneration, and performance management</li> </ul> <p><i>Operational HRM:</i></p> <ul style="list-style-type: none"> <li>• Controls over operational HR issues such as staffing, deployment, training &amp; development</li> </ul>
Interventional Autonomy	<ul style="list-style-type: none"> <li>• Institutional arrangements for controlling and monitoring performance</li> </ul>	<ul style="list-style-type: none"> <li>• Nature and extent of: <ul style="list-style-type: none"> <li>○ Ex post reporting requirements</li> <li>○ Provisions for evaluation and audit of operations</li> <li>○ Sanctions/interventions as a result of under/non-performance</li> </ul> </li> </ul>

Table 6.1: Autonomy Dimensions for Comparative Analysis

## 6.2 LEGAL AUTONOMY

Created through an Act of Parliament, the Revenue Administration (Amendment) Act No. 15 of 1998, the Jamaica Tax Administration (JTA) was established on December 1, 1999 as a directorate within the MoF. The five revenue departments, notwithstanding their legal status as separate and independent

organs of government, were all encompassed under this single unifying Tax Administration (TA) structure. Neither the IRD nor the CD has any legal personality outside of central government, nor do they have the authority to own assets or to borrow funds on the capital market.

Absent a separate legal status, still within close proximity of the Finance Ministry, and still needing to interface heavily with a number of other central government institutions, the revenue departments were found lacking autonomy along this dimension.

### **6.3 STRUCTURAL AUTONOMY (GOVERNANCE FRAMEWORK)**

In 1981, the GoJ established an intermediate Revenue Board with responsibility for the direction (albeit for a short period of time), co-ordination, inspection and monitoring of all operations of the various revenue departments. Creation of the Tax Administration in 1999 and the concomitant deinstitutionalisation of the Board of Management structure resulted in the creation of a new institutional layer between the departments and the Ministry of Finance. Created was a new position of Director General (DG) Tax Administration, and the DG's Executive Office (DGEO), staffed by a small group of specialist analysts in tax and customs matters. Revenue Commissioners report directly to the DG, who in turn reports to the Finance Minister through the Finance Secretary (FS). The Tax Administration chief executive and heads of departments are all appointed by the Public Service Commission on the advice of the FS.

Focusing on roles and responsibilities, direct control and supervision of the departments remains the purview of the Minister of Finance, who maintains all the attendant powers of alteration and rule-making granted him under the various revenue laws. The Financial Secretary continues to interact with and give guidance to the most senior officials within the revenue departments. The role of the Director General, as spelt out in the Revenue Amendment Act, entails the exercise of centralised direction and supervision over all revenue departments, including the oversight of priorities between strategic, medium-term and annual plans for tax administration. Unlike governance arrangements elsewhere, for example in Guyana, where the head of the Authority has legal jurisdiction over and full responsibility for revenue operations, lack of appropriate legislative amendments to Jamaican tax and customs laws means that all powers emanating from the revenue laws (for example, powers to make a determination or to issue interpretations) are still vested with the heads of the revenue departments.

Foreseen during the design stage of reform was the potential backlash against such structural arrangements as regards clarity of lines of authority and accountability. Speaking during the debate of the Bill to amend the Revenue Administration Act, the Shadow Finance Minister spoke of government's "fashioning of a phenomenon" referred to as a Director General:

'...a position without clout, a position without considerable authority, a position almost like an emasculated puppet perhaps to operate at the whim and fancy of the Ministry of Finance.' (Bill to Amend the Revenue Administration Act, p. 81).

The lack of a fully empowered chief executive has, in the view of the parliamentary Opposition members, resulted in a loose amalgam of executive control and a confusion of the chain of command. It has given rise to an anomalous situation of the departments' continued strong operational ties to the centre and their enlarged scope for autonomy from the Director General and the Director General's Executive Office. Reported was the tendency, not so much within Inland Revenue but particularly within Customs, for decisions involving reforms to be taken by senior management without the prior involvement of the Director General.

The foregoing has illustrated the limited structural autonomy of Inland Revenue and Customs from the parent Ministry of Finance, their enlarged scope for, and at times, actual exercise of autonomy from the Office of the Director General as a result of lack of changes to existing revenue legislation.

#### **6.4 FINANCIAL AUTONOMY**

Financing of the Jamaican public sector is governed by three principal instruments, namely:

- (a) the *Constitution*;
- (b) the Appropriations Act; and
- (c) the Financial Administration and Audit Act.

Both the Inland Revenue and Customs derive their income from central government funding provided through standard annual parliamentary appropriation using the normal public expenditure management and budget

decision processes of government. After the initial allocation of funds, the departments have little real means of extending their incomes to cover any unexpected expenditure. Chapter VIII, Section 114 of the Constitution specifies that all public revenues must be paid into the Consolidated Fund. Regarding unexpended appropriations, the departments have no authority to carry over funds to the next financial year (FY). Section 19 of the Financial Administration and Audit Act stipulates that every appropriation shall cease to have effect at the close of the FY and any unexpended balances be paid into the Consolidated Fund. Departmental income can be extended via two means: a) through approved Supplementary Estimates whereby additional funds are allocated in November, near the end of the FY, or b) through representation to the Ministry of Finance for emergency funding to cover programmes outside of the allocated budget. In the case of Customs, income is extended through the permitted withholding of a small percentage of collected customs user fees<sup>46</sup> that are used to assist with operational costs.

Regarding the release of funds, Section 117 subsections 1 & 2 of the Constitution stipulates that no sum shall be paid out of the Consolidated Fund except upon the authority of a warrant under the hand of the Finance Minister. Requests for recurrent expenditure are funded via monthly warrants and via quarterly warrants for capital expenditure.

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<sup>46</sup> Customs collects user fees on all imported goods at a current rate of 2% of the Cost, Insurance & Freight (C.I.F) value of imports.

Figure 6.1 illustrates the process flow from the submission of the monthly cash flow statement by the departments to the Finance Ministry, to the disbursement of requested funds.

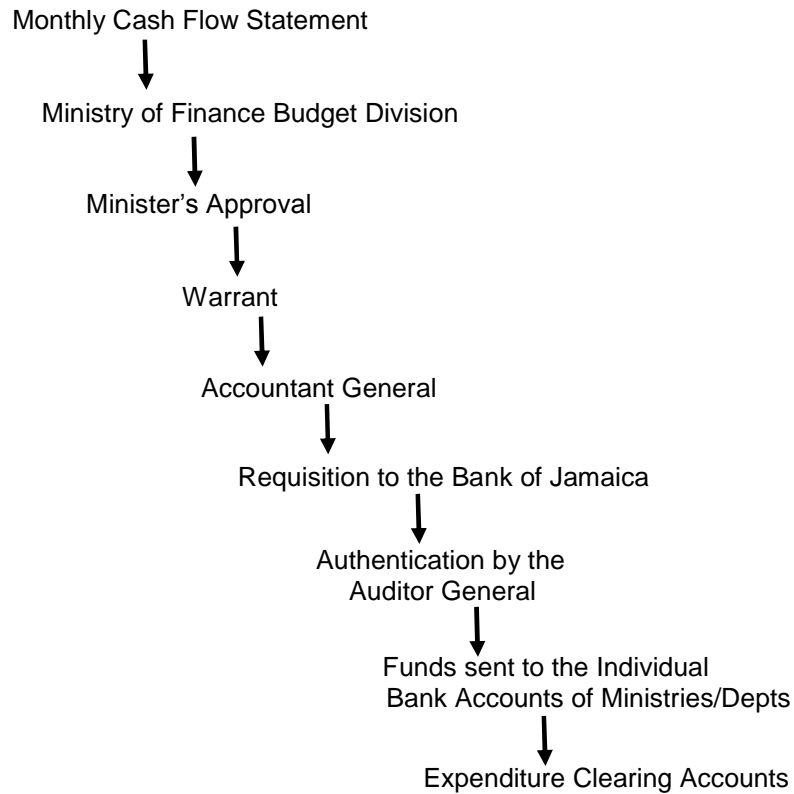


Figure 6.1: The Funding Process

As illustrated, funds are not released automatically through the direct deposit of monies into the departments' bank accounts, but disbursed via various central controlling institutions which serve as points for additional authorisation. Warrants are first authorised externally by the Accountant General before authentication by the Auditor General.

The vast amount of centralised controls emanating from supreme and other national laws have resulted in the revenue administrations having very limited

formal and factual financial autonomy. Heads of both departments highlighted the impact of financial dependence, including the inability to execute programmes within the timeframes and sequence as planned in the organisation's Strategic Plan and operational Work Plans.

## **6.5 POLICY AUTONOMY**

Whilst the Ministry of Finance has sole responsibility for determining fiscal policy, few formal ex ante rules, norms and standards govern the choice of policy instruments and processes for the departments' achievement of fiscal objectives. IMF findings in its 2007 fiscal review and the findings of this study confirmed that both Inland Revenue and Customs exercise a fairly large degree of policy autonomy, albeit at the informal level. Such autonomy, however, must include programmes and initiatives that fit within the framework of government's macroeconomic policies and with fiscal rules and guidelines.

In the areas of planning and performance management, both departments have a fair amount of leverage in identifying long, medium and short term strategic priorities; as well as in determining performance objectives, targets and performance indicators. Commissioners noted that though change strategies and change initiatives are generally discussed with the Financial Secretary, policymakers expect that heads of departments will assume full responsibility for determining strategic priorities and for deciding how outcomes will be achieved. Historically, very few requests for modifications to strategic or operational plans are issued by the Director General or the Finance Ministry. Where the

departments are conditioned in their exercise of policy autonomy is in deciding the quantity of output for revenue targets. Whilst there has been some change over the years in the level of involvement of the Tax Administration in setting revenue targets, the process is still largely top-down with targets being imposed from above by the Finance Ministry.

Focusing on choice of policy instruments and (sub)processes for achieving fiscal outcomes, strategy formulation by the Customs department to address a number of global challenges has resulted in the development of automated risk management and just in time delivery systems. Automated services include direct trader input of import and export declarations, the electronic transmission of manifests before cargo arrival, and electronic data interchange for electronic payment of duties and taxes. Risk management systems and techniques have been applied through a 'Fast Track' facility that permits cursory checking of documentation submitted by low risk brokers with an error rating of 5% or below, as well as a 'Selective Importation Inspection System' (SIIS), implemented in 1994, that allows importers with a good track record to have their containers selectively examined at their premises. A 'Pre-Arrival Processing System' implemented in August 1992 provides just-in-time service delivery to importers by facilitating the processing of documents up to 10 days prior to cargo arrival. Initial conceptualisation and operationalisation of such systems continue to be under the department's sole purview. For example, with the Fast Track and SIIS systems, which importers/brokers are included on or removed from these lists



and how they are monitored are matters solely for Customs determination. Post-reform the Customs continues to make such programmatic choices.

Inland Revenue likewise is fairly unfettered in its choice of strategies for executing government policy. Initiatives include the implementation of automated services such as electronic drop boxes and Internet Kiosks for the timely and efficient collection of taxes. Compliance strategies involve the introduction of a 'Voluntary Disclosure Programme' to encourage defaulting taxpayers to voluntarily acknowledge their tax liabilities in return for concessionary treatment with regard penalty charges. Compliance officers have discretion to reduce penalties payable by law, and to negotiate with taxpayers the terms of arrangements for settling outstanding debt.

Both organisations continue to receive enormous support from the Ministry of Finance in their choice and execution of programmes and initiatives geared towards the achievement of fiscal aims and objectives.

Findings show that the IRD and CD enjoy a fairly high degree of informal policy autonomy both pre- and post their reform status. Such autonomy is being used to identify and sequence the implementation of various strategies, programmes and initiatives.

## **6.6 FINANCIAL MANAGEMENT AUTONOMY**

Each focal organisation both possess and exercise a limited amount of formal and factual financial management autonomy. Each has its own Accounting

Division responsible for maintaining departmental accounting records, its own bank account into which funds are paid with full authority to write cheques against such accounts to honour debts.

Autonomy extends very little beyond these structural arrangements. The Financial Administration and Audit (FAA) Act (1959), the Regulations and Instructions accompanying the Act, the Financial Management (Ministries and Departments) Regulations (1996), the Staff Orders (2004), and the Civil Service Establishment Act (Amendment 2007) all set out basic principles for the management and control of public monies.

Operational within each department is the automated centralised Financial Management Information System (FMIS) implemented under government's Financial Programme Management Improvement Project. Approved budgetary allocations are inputted onto the FMIS, with all subsequent expenditure being drawn through the system. Regarding asset acquisition and asset management, the Estate Management Division of the Ministry of Environment and Housing has full responsibility for acquiring all premises for purchase or rent. Neither Inland Revenue nor Customs has authority to dispose of government assets without the prior approval of the Finance Ministry.

Both departments make use of the process of 'virement' to divert allocated funds, albeit with certain restrictions. Funds can be vired within an object code after approval by the internal Accounting Officer. By law, the departments are not

permitted to shift funds from Objects 21 or 31<sup>47</sup> or to move funds across other objects without the prior permission of the Ministry of Finance. In practice, however, whilst the departments adhere to restrictions attached to the abovementioned two object codes, funds are occasionally moved across other objects. Ex-post approval of such exercise of informal powers is usually granted provided there is proper justification and the department has remained within its overall drawing balance.

Where the departments exercise a fair amount of formal and factual autonomy is in the procurement of goods and services. In 1992, the closure of the Central Supply Division paved the way for the decentralisation of the procurement function to Permanent Secretaries and heads of departments, a situation which carried into the post-reform period. Departments over the past two decades have therefore been responsible for procuring a large amount of their goods and services, excluding the purchase of large capital goods and contracting for civil works. Each department has a Procurement Committee whose function includes evaluating submitted tenders and approving the purchase of goods and services at a cost up to the set threshold limit of J\$3.99m. In order to free themselves of constraints resulting from central procurement guidelines and this perceived low threshold limit, both departments currently engage in the informal autonomous practice of contract fragmentation. Such actions provide a means of escape from

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<sup>47</sup> Object 21 covers compensation of employees, including items such as wages, salaries, overtime, housing and utilities allowances, entertainment and meal allowances. Object 31 covers the purchase of capital goods and includes items such as furniture, small equipment and appliances, motor vehicles; as well as computer hardware and software.

the delays resulting from forced competitive bidding and review by external institutions.

Despite such autonomy, findings showed a marked difference between the focal organisations in their actual exercise of powers in the area of procurement. Unlike Customs, which reportedly has a long history of procuring the majority of resources needed to assist in modernisation, the Inland Revenue Department, during the past four years under the new dispensation, has started to use its purchasing powers to acquire the goods and services needed to effect and sustain reforms. New senior managers in the IRD spoke disapprovingly of the practice under the old dispensation of large amounts of unspent funds being returned to the Consolidated Fund at the end of each financial year, despite a clear lack of availability of resources in a number of critical areas. Efforts are now being made to purchase much needed furniture and computer equipment that will likewise enable tax modernisation.

Challenges and possible repercussions of delegating financial management autonomy vis-à-vis other forms of authority were outlined by the government of the day:

‘We have to be more careful with money than for example with hiring or firing, especially considering that one is dealing with the handling of billions of dollars. When I suggested to my Cabinet colleagues that success would depend on the accountability systems in place, I was told that what I summarised in a couple of words is, in practice, much more difficult and involving, with a number of implications and ramifications. Government already has problems with small institutions. Devolving financial management matters, the issue of capacity will need to be

addressed within all of the revenue departments (Dr Omar Davies, Finance Minister).

The above statement makes clear the apparent risk perceived by government of granting formal financial management autonomy to the revenue agencies. Not surprising therefore, is the fairly limited elbow room for manoeuvre along this dimension.

## **6.7 HUMAN RESOURCE MANAGEMENT AUTONOMY**

Prior to December 2002 (pre-TaxARP and some three years into reform), the revenue services operated within a framework characterised by a high degree of centralisation of authority and policy for personnel administration. Such authority was shared amongst three main central institutions: the Office of the Services Commissions (OSC), the Establishment Division (ED) of the Finance Ministry, and the Efficiency and Reform Directorate (ERD) within the Office of the Prime Minister.

At the level of strategic human resource functioning, pay levels, which were tied to the civil service pay scales, were set by the Compensation Unit of the ED through a process of job evaluation and government's ability to pay. Both the Compensation and the Industrial Relation Units of the MoF were responsible for salary revision in consultation/negotiation with the various unions representing public sector employees. For the creation and classification of new posts or the establishment of new organisational units, the revenue agencies were required, like the rest of other government departments, to submit their requests to the ERD.

At the human resource operational level, all recommendations relating to appointments, discipline and separation had to be forwarded to the OSC for submission through the Public Service Commission to the Governor General, in whom final authority was vested. Chronic problems and weaknesses occasioned by this split in responsibilities included slow response times in dealing with staffing proposals, lengthy timeframes in filling vacancies and in addressing disciplinary matters.

In 1999, as part of a broader thrust towards improved service delivery and accountability under the Jamaica Public Sector Modernisation Programme (PSMP), the decision was taken to delegate some of the functions under the Public Service Regulations (1961). In December 2002, the MoF became the nineteenth entity to receive the instruments of delegation – the ‘Delegation of Functions (Public Service) (Specified Departments) Order 2002’. Under the new arrangements, the departments’ scope of HR management autonomy was to encompass four specific areas:

1. **appointments** (including recruitment, first appointment, transfers, promotions, acting arrangements and secondments).
2. **training and development** (excluding the selection of officers to undertake local courses of over 90 days duration, and of candidates for overseas training programmes and scholarships);
3. **discipline**; and
4. **separation** (excluding retirement on medical grounds, approval of requests for early retirement, and retirement beyond age 60).

Delegation of these four functional areas meant that still outside the departments' scope of authority are other areas of HR functioning such as organisational (re)structuring, pay and grading, and position classification. Note that whilst departments still have no authority to determine pay levels, they are able to determine the point on the payscale at which employees (recruited or promoted) will be remunerated.

Revenue agencies were expected to exercise full control of the delegated functions for all personnel up to the senior level and to make suitable recommendations to the Tax Administration for all such matters relating to senior personnel. Consequently, the function of central controlling institutions was to change from direct involvement to monitoring and reviewing whether line departments are executing their powers in accordance with the Delegation of Functions, the Staff Orders and the Public Service Regulations.

The Instrument not only clearly delineated the scope of authority granted, but sought to ensure that administrative discretion was tempered within a framework of accountability. Pursuant to the Instrument, an 'Accountability Framework', a 'Values Framework' as well as guidelines issued by the Public Services Commission all outlined the central standards and rules to which the departments were expected to adhere. Repeated or gross violation of rules and regulations could result in the revocation and reversion of authority to the OSC or the Governor General. The role of the OSC involved ensuring agency adherence to guidelines through periodic site visits as well as the review of submitted HR schedules.

In order to effectively exercise such authority, Committees focusing on specific areas of human resources management, discipline, and staff development were established at the Tax Administration executive level and mirrored at the departmental levels. Regarding the actual exercise of delegated human resource powers, marked achievements in the area of appointments included the use of more progressive recruitment strategies, namely the conduct of structured interviews and the use of psychometric testing to enable more targeted and effective screening of job applicants and placement of new functionaries. Focusing on training and development, whilst neither department to date has in place a formal training strategy for the development of human capital, each has used its autonomy in this area to engage in the conduct of annual training needs analyses, the development of training plans, and the conduct of training courses to meet identified training needs. According to one in-house Training Consultant, learning and development has been pushed higher up the organisational agenda and made more a part of mainstream operations than was previously the case.

Despite definite achievements, however, there were concerns about the misuse of delegated authority, particularly with regard to appointments, and moreso in the case of the Inland Revenue department. Notwithstanding established policy on appointments and promotions, characteristic of the IRD under the old dispensation was the practice of appointing persons on the basis of loyalty to top management as opposed to merit and competence - a situation that led to what one former HR Specialist referred to as 'the institutionalisation of a culture of sycophancy'.



Aside from the actual exercise of formal powers, also worth noting is the departments' practice of informal strategic and operational HR autonomy, sometimes in circumvention of civil service rules and regulations. Unable to set levels of remuneration to address problems of low morale and high turnover, both departments resorted to boosting salaries through the payment of honoraria. According to the 2001 Auditor General's Report, during the 12-month period January-December 2000, Customs paid honoraria to its accounting staff, 'a practice which seemed to be an ongoing feature instead of the exceptional occurrence normally expected' (p.12). The 2004 Report spoke to the informal practices engaged in by Customs so as to free itself of establishment constraints. These included the payment of salaries totaling approximately J\$6.7m to twenty-seven fortnightly and temporary monthly paid employees: (a) assigned to posts that were not on the approved Civil Service Establishment and; (b) for whom no letters of employment were seen. Also highlighted was the practice of post manipulation. Both departments were found engaging in the creative act of borrowing vacant posts within specific work sections to meet manpower needs within other functional areas. Established posts were therefore being 'filled' with incumbents operating outside the work areas to which these positions were allocated.

Findings revealed that prior to 2002, the two focal organisations exercised a limited amount of strategic and operational human resources management. After 2002, delegation of specific HR functions resulted in the departments capacity for the exercise of operational human resources management, albeit within a

framework of monitoring and controls. The organisations made use of a number of informal creative and sometimes illegal practices to circumvent constraints on the exercise of strategic human resources management.

## 6.8 INTERVENTIONAL AUTONOMY

Subjected to extensive reporting requirements, as well as to having both their financial and non-financial activities heavily scrutinised through various internal and external audit processes, the Inland Revenue and Customs departments, in practice, exercise a minimal level of interventional autonomy. Table 6.2 illustrates some of the formal reporting requirements of the revenue departments.

<b>Srl. No.</b>	<b>Document Type</b>	<b>Frequency of Submission</b>
1.	Budget Estimate	Yearly
2.	Supplementary Estimate	Yearly
3.	Costed Activity Plan	Yearly
4.	Cash Flow Forecast	Monthly
5.	Statistics on Revenue Yield	Daily
6.	Revenue / Expenditure Accounts	Monthly
7.	Reports on Revenue Foregone	Monthly
8.	Arrears of Revenue	Monthly
9.	HR Schedule	Monthly & Quarterly
10.	Quarterly Report	Quarterly
11.	Contract Awards Report	Quarterly
12.	Cost Savings Report	Quarterly
13.	Half-Yearly Report	Bi-annually
14.	Appropriation Account	Yearly
15.	Annual Report	Yearly

Table 6.2: Departments' Formal Reporting Requirements

Submissions include both ex ante plans and ex post performance data. Near the end of each financial year a 'Draft Budget Estimate' and a 'Costed Activity Plan' detailing funds needed for the following year and the projected usage of such funds must be submitted to the Finance Ministry. Requests are followed up at

the end of the year by the submission of an 'Appropriation Account' detailing actual expenditure against approved estimates, as well as an 'Annual Report' covering all aspects of organisational performance along both quantitative and qualitative performance measures.

Interventions by internal actors originate from entities such as the Internal Audit Division established within each department to conduct audits of both business and support functions; as well as the Audit Committees that review all internal audit reports, analysing recommendations and responses by auditees. Interventions from external actors come from a number of sources, including the Office of Services Commissions (OSC), the Auditor General's Department (AGD), and the Office of the Contractor General. The departments submit on a quarterly basis to the OSC a human resource schedule detailing performance in the four autonomous HR areas. External audit of all government departments is the constitutional responsibility of the Auditor General. Section 120 (1) of the Jamaican Constitution provides for the establishment of the post of Auditor General with responsibility for auditing and reporting on all public accounts, reports submitted at least once per year to Parliament through the Public Accounts Committee for scrutiny and deliberation. To aid in the effective discharge of its duties, the AGD has, over the last eight years, permanently stationed a team of four auditors within each of the two focal departments.

The various central institutions make use of a range of criteria for assessing performance, including (a) the degree of compliance with the FAA Act, the Staff Orders and Regulations, procurement guidelines, as well as the Accountability

Framework under the DoF; and (b) the extent of controls in critical areas such as revenue collection and the detection of tax evasion.

Focusing on sanctions, heads of departments are subject to summons before Parliament to give account for actions taken or not taken as highlighted in the Auditor General's Annual Report; and also to attend meetings in the Finance Ministry to respond to matters causing concern. In terms of poor or non-performance, the only punitive measures for failure to meet individual departmental targets as well as the set collective fiscal revenue target is the withholding of cash bonus incentives from staff.

Research findings therefore lead to the conclusion that both the IRD and the CD exercise a minimal level of interventional autonomy, subjected as they are to mandatory requirements for the submission of plans and reports which need to be reviewed and or/approved by central authorities. Such central institutions have the right to intervene in organisational processes should standards fall below the expected requirements. Table 6.3 summarises the formal autonomy delegated to the revenue agencies along the various dimensions discussed.

## **6.9 CONCLUSION**

This chapter presented findings on the nature and extent of autonomy granted to and exercised by the revenue agencies. Despite recommendations of the World Bank for the implementation of a model of tax administration typical of that adopted in a number of developing countries in Anglophone Africa, Jamaica did

DIMENSIONS OF AUTONOMY	JAMAICA REVENUE AGENCIES
LEGAL AUTONOMY	<p><b>Legal Basis:</b> Revenue Administration (Amendment) (RAA) Act (No. 15 of 1998) established the new revenue departments with effect from 01 December, 1999.</p> <p><b>Legal Status:</b>  (a) <b>Pre-Reform:</b> Agencies existed as departments of government.  (b) <b>Post-Reform:</b> Under the new law, departments each created as separate organs under an umbrella Tax Administration Directorate. Agencies still dependencies of the Ministry of Finance with no separate legal personalities, no ability to own assets or to borrow funds on the capital market.</p>
STRUCTURAL AUTONOMY:  (GOVERNANCE ARRANGEMENTS)	<p><b>Pre-Reform:</b> Intermediary Board of Management structure in place with the 1981 passage of the Revenue Board Act and the establishment of the Revenue Board. Commissioners reported to the Minister of Finance through the Finance Secretary (FS).</p> <p><b>Post-Reform:</b> De-institutionalisation of the Board with the passage of the RAA Act. Insertion of a new institutional layer through the creation of the post of Director General (DG) and establishment of the Executive Office of the DG. Revenue Commissioners report to the DG who reports to the Minister of Finance through the FS.</p>
FINANCIAL AUTONOMY:  (FUNDING MECHANISM)	<p><b>Source of Funding:</b></p> <p><b>Both Pre- and Post-Reform:</b> Standard parliamentary appropriation using the normal public expenditure management (PEM) and budget decision processes of government. Limited ability to extend appropriation via supplementary estimates; in the case of Customs, opportunity to do so through permitted withholding of a percentage of customs user fees.</p> <p><b>Transfer of Funds:</b> Not automatic. Funds released (monthly for recurrent expenditure, and quarterly warrants for capital expenditure) by the Accountant General upon submission of cash flow statement to the Ministry of Finance.</p>
POLICY AUTONOMY	<p><b>Both Pre- and Post-Reform:</b> Little, if any, autonomy to determine output with respect to revenue targets. Fair amount of latitude to choose among alternate behaviours when implementing a policy decision. Generally, limited ex-ante rules, norms and standards specifying the policy instruments and processes for use in the achievement of fiscal objectives. Minimal interference in operational matters by the Financial Secretary or the Minister of Finance.</p>
MANAGERIAL  (A. FINANCIAL MANAGEMENT)  AUTONOMY	<p><b>Both pre- and post-reform:</b> Fair amount of authority to procure goods and services within set guidelines. Authority to reallocate (vire) funds within object headings. Departments generally required to operate within the broader spending framework established by government, following central rules and guidelines for accounting and asset management.</p>
MANAGERIAL  (B. HUMAN RESOURCES MANAGEMENT)  AUTONOMY	<p><b>Pre-reform up to 2002.</b> Very little autonomy in the management of human resources. HR authority and policy shared between three central institutions: the Office of Services Commission, the Efficiency and Reform Directorate of Cabinet Office, and the Establishment Division of the Ministry of Finance.</p> <p><b>Post-2002 and beyond reform:</b> Instrument entitled the 'Delegation of Functions Order 2002' (DoF) signed between the Public Service Commission and the Finance Secretary delegated to the revenue agencies full authority for the management of four main HR areas (appointments, training, discipline and termination). Departments expected to operate within clear guidelines as specified in the 'Accountability Agreement' and 'Values Framework' accompanying the DoF.</p>
INTERVENTIONAL AUTONOMY	<p><b>Both Pre and Post-TaxARP:</b>  (a) <b>Reporting Requirements:</b> Both departments subject(ed) to extensive financial and non-financial reporting requirements, particularly with respect to achievement of revenue targets.  (b) <b>Audit Provisions:</b> Various internal institutional arrangements for pre- and post-audit checking, including the establishment of the post of Chief Internal Auditor and the Division of Internal Audit. External audits performed by central agencies such as the Office of Services Commission and the National Contracts Commission.</p>
ACCOUNTABILITY TOWARDS STAKEHOLDERS AND THE GENERAL PUBLIC	<ul style="list-style-type: none"> <li>- No requirement by law to report to any supreme body such as Parliament for performance outcomes.</li> <li>- Publication of Annual Reports by both agencies.</li> <li>- Both organisations engage in public consultation with respect to the exercise of their revenue collecting and rule-making powers.</li> </ul>
TRANSITORY PROVISIONS DURING REFORM	<p>All jobs transferred to the MoF. Revenue officials required to compete for jobs within the newly reformed departments. No specific transitory period allocated within the enabling legislation.</p>

Table 6.3: Degrees of Formal Autonomy of the Jamaican Revenue Agencies

not follow wholeheartedly such recommendation. Whilst virtually all revenue collecting agencies were brought under one umbrella body, overall the bureaucracy was delegated only a fairly limited amount of formal autonomy to operate within the new structural arrangement.

Governance arrangement resulted in government's toggling from an intermediary Board Model to the introduction of a new intermediary layer in the form of an Executive Secretariat headed by a Director General and staffed by a group of experts in tax and customs. In both instances, lack of empowerment of these institutions to direct the operations of the revenue departments meant that at no time, pre- or post-reform, was the Revenue ever far removed structurally from the Finance Ministry.

Financially, the departments relied totally on central government funding, with only the Customs department having the opportunity to extend income through the charging of user fees. The criticality of this resource, the magnitude of the resource exchange, the lack of its substitutability, as well as the non-availability of alternate sources (given the department's lack of legal status to borrow on the capital market) occasioned a high state of dependency on the Ministry of Finance for financial resources. The unavailability of funds at the times needed resulted in some programmes and initiatives being compromised in terms of their scope, timeliness or actual implementation.

Likewise limited was the amount of formal autonomy granted in the areas of financial management and strategic human resources management. The high

degree of centralisation and formalisation, as well as the proliferation of a number of central institutions with approval or oversight functions allowed very little room for operational flexibilities.

Despite the lack of formal autonomy along these dimensions, the Revenue, more so the Customs Department, were able to exercise some degree of informal autonomy in order to increase flexibilities. This was achieved through practices such as virements, the borrowing of vacant posts allocated to specific functional areas to create and fill positions needed in other areas, as well as remunerating staff above levels set out in the Civil Establishment Order so as to motivate lower paid staff. Informal policy autonomy was exercised through independently devised and implemented long, medium and short term strategic priorities, programmes and initiatives in line with government's macro-economic policies and its fiscal administrative reform agenda aimed at increasing revenue yield. Such informal policy autonomy was only fettered in the ability of the Revenue to determine quantitative revenue collection targets.

Where autonomy was formally ascribed to the departments was in the area of operational human resources management. The Revenue was delegated formal autonomy to appoint, train and develop, discipline and terminate staff, albeit within an accountability framework that detailed the parameters for performance. Formal autonomy in this area was actually being put to use to effect significant improvements in the management and development of human resources, through, for example, the application of best practices in employee recruitment and selection, as well as in provisions for building capacity through training.

Given the delayed formal delegation of operational human resource management powers - some three years after administrative reforms - one lingering question remaining was the likelihood of greater autonomy being granted along other dimensions in the near future. On the subject of financial management autonomy, the Deputy Finance Secretary noted:

‘In the long term, I do not see any hope for greater autonomy. Because of the financial constraints we are under, we will want all revenues to flow through the Consolidated Fund. There may be a case for greater autonomy in the long term. After a full evaluation of the performance of the executive agencies, we may then look at the revenue departments’.

Government’s overall short to medium-term plans for empowering the Revenue were laid bare by its most senior finance official in the People’s National Party (PNP) administration. As stated by the Finance Minister:

‘Autonomy, the way I see it, is cosmetic and not revolutionary. I don’t know that it provides any greater efficiency. We should be able to streamline administrative procedures and improve our operations within existing arrangements.

Having examined the nature and extent of autonomy delegated and exercised within the Jamaican case, the spotlight now turns on policies, practices and circumstances within the Dominican case.



## **CHAPTER 7**

### **BUREAUCRATIC AUTONOMY IN PRACTICE: THE DOMINICAN CASE**

#### **7.1 INTRODUCTION**

Mirroring Chapter 6, this chapter presents findings on the nature and extent of formal, factual and informal autonomy in respect of the Dominican case both pre and post autonomisation. The reader may recall, as mentioned in Chapter 4, that the methodology being employed is that of a keyhole comparison. The results presented for the Dominican case are not as in-depth and detailed as for the Jamaican case. Again issues are discussed using the benchmark criteria presented in Table 6.1.

#### **7.2 LEGAL AUTONOMY**

Pre-modernisation, the Customs Department (DGA) and the Internal Taxes Department (DGII) were both constituted as public entities, part of and fully dependent on the Ministry of Finance. As part of a process of fiscal administrative reform, two new pieces of legislation, Laws 226-06 and 227-06 of June 21, 2006, established the DGA and the DGII respectively as decentralised semi-autonomous state entities each with its own separate legal status. Both laws offer to the two agencies functional, economic, financial, technical and administrative autonomy, with legal capacity to own assets, acquire rights, as well as to enter into agreements, contracts and covenants.

### **7.3 STRUCTURAL AUTONOMY (GOVERNANCE FRAMEWORK)**

Before passage of the autonomy laws, revenue departments fell directly under the Finance Ministry, agency heads reporting to the Secretary of State, Finance on a range of financial and non-financial matters. No intermediary board model existed to monitor and oversee the governance of these institutions. The General Director and sub-directors of both agencies were hired and subject to removal from office by the President of the Republic in the exercise of his constitutional authority.

Article 5, Paragraphs I and III of both new pieces of legislation specified clearly the new governance arrangements. Both agencies would continue to be directed by a General Director who would serve as chief executive, with responsibility *inter alia* for:

- ◆ directing the politics, strategies, plans and administrative programs of the institution;
- ◆ devising the organic structure<sup>48</sup> and budget of the organisation; as well as
- ◆ monitoring and supervising the execution of the functions of the organisation

Both laws made provision for the establishment of a fully empowered internal Board of Management - a Council of Direction, comprising the General Director as Chair, and four deputy directors. Council responsibilities include approving the organisation's organic structure and annual budget.

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<sup>48</sup> The organic structure of the organisation includes features such as its organisational chart as well as its HR regime which covers matters such as job classification, evaluation and promotion systems, salary scales and career plans.

This initially planned degree of arms-length control was, however, fairly soon interrupted by the passage of law 494-06 in December 2006. This piece of legislation was far-reaching, first in its creation of a new restructured Finance Ministry and secondly, in its establishment of a Higher Council of Tax Administration<sup>49</sup> to monitor and oversee the performance of the revenue agencies. It was a move that was to drastically alter the agencies' original scope of autonomy as a result of redefined roles and responsibilities.

The Secretary of State continues to have responsibility for determining fiscal policy, as well as for co-ordinating the management of public agencies to ensure fiscal sustainability. General Directors, instead of being responsible for 'directing the politics, strategies, plans and administrative programs of the institution' as mandated under the original autonomy laws, are now responsible for 'directing *the application*' (own emphasis added) of such matters. The Council of Direction witnessed a shift in its status from an empowered to an advisory role, i.e from approving the various submissions presented by the departments to 'knowing and thinking' on matters and presenting these to the Higher Council for approval. Article 18 of Law 494-06 states that it is the newly created Higher Council which would now be directly responsible for defining and approving institutional plans and strategies, and for monitoring and evaluating the departments' performance.

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<sup>49</sup> The Higher Council comprises the Secretary of State for Finance as Chair, the Secretary of State for Industry and Commerce, the Technical Secretary of the Presidency, the General Director of the DGII and the General Director of the DGA. Both chief executives participate in the meetings of the Governing Council, with voice and vote.

Commenting on the rationale for this about-face decision, one deputy director in the DGII opined that:

‘Approval of laws 226-06 and 227-06 in June 2006 submitted to debate the extensive reach of structural autonomy granted to the two revenue agencies, and more importantly, the need for consideration to be given to the control mechanisms that needed to be put in place to serve as a counterweight to such autonomy. The product of this debate, law 494-06, served to clarify the status and role of the DGII and the DGA vis-à-vis relevant internal and external public institutions’.

Findings demonstrate that a large degree of structural autonomy was granted to the Dominican revenue agencies, a measure, within a short six-month period, slightly retrenched to allow for more controls by the centre over matters involving the formulation of strategic priorities and the development of high level plans and programmes for policy implementation.

#### **7.4 FINANCIAL AUTONOMY**

Prior to 2006, operations of the Dominican revenue agencies were fully funded through central budgetary appropriations, mostly based on the previous year’s figures with incremental adjustments to the various items. In this context, the Technical Operating Cabinet was responsible for setting commitment limits and the National Budget Office (ONAPRES) for approving expenditure.

Requests for funding were submitted by spending units on a case-by-case basis, approvals reportedly proving to be highly discretionary.

Efforts by the Republic at improving resource predictability after 2002 resulted in a move towards a warrant system to replace transaction-based approvals. Under this system, each Ministry or spending unit submitted a quarterly plan (warrant) to ONAPRES for approval. Funds were then released to the departments on a monthly basis. All non-executed assigned funds expired at the end of each quarter and at the end of the financial year.

According to Head of the Finance Department, DGII, initially limited allocations made it very difficult for the organisations to implement much needed changes. Additional funding could only be sought after the first month of the fiscal quarter, or via requests for supplementaries to be approved by Congress.

With regard to monies collected, all revenues had to be paid into government's collection account, the DGA being an exception given its authority to withhold part of its income from the collection of customs user fees.

After June 2006, financing of the revenue departments ceased to be a line item of government's budget, funding now set primarily as a fixed percentage of actual tax collections. Under Law 226-06, the income of the DGA will be derived from 4% of the effective collection obtained each month by way of taxes on foreign trade, and 0.4% of the cost, insurance and freight (CIF) of imports charged to importers as customs user fees<sup>50</sup>. In the case of the DGII, Law 227-06 stipulates that the department's budget will be financed by 2% of the effective collection obtained each month from taxes administered. For both departments, additional

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<sup>50</sup> The Law specifies that such fees can only be charged where customs clearance or shipment of goods is effected within 2 days for the calendar year 2006, and in 1 day from the calendar year 2007.

sources of financing will be incomes originating from: seizures; the sales of goods of property; the provision of services; transfers, bequest and donations of other sources (public or private, national or foreign)<sup>51</sup>; proceeds of programmes of international co-operation; as well as credits or loans from public or private financial companies.

Both pieces of legislation mandate the automatic transfer of such funds by the National Treasury directly into the account of each organisation within the first 5 days of the month following that in which the collections had been generated. Formal financial autonomy is actually being realised in practice, through the automatic actual release of funds both at the level and within the timeframe as specified by law.

Financial flexibility, which resulted in a direct funding regime that allowed for increased availability of resources within the DGII, was credited largely for the unprecedented major turnaround in revenue yield after only one year of its operation as a decentralised state organ.

## **7.5 POLICY AUTONOMY**

Both the DGII and the DGA exercise(d), both pre- and post-autonomisation, a fairly large degree of policy autonomy, hence no major formal shift in this area. Agencies were, and still are expected to adopt the relevant institutional politics (norms, programs and systems) pertinent to guaranteeing the best fulfillment of

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<sup>51</sup> Excluded are donations from taxpayers and the trading community.

objectives, insofar as they are aligned with national fiscal policies, and can be financed from allocated budgets.

Factual exercise of policy autonomy has resulted in the DGII's continued efforts at closing the compliance gap through the conceptualisation and implementation of a number of initiatives. Measures include the introduction of a system of fiscal proofs to assist in tax collection. Other initiatives such as automation and software localisation, as well as modified procedures of collection all allow for a strengthening of the DGII's administrative environment. The department continues to promote tax consciousness through the application of tax education and disclosure programmes to improve the behaviour of taxpayers in the opportune and voluntary fulfillment of their tax obligations.

Likewise within Customs, a number of introduced measures have resulted in more effective and efficient systems for law enforcement and revenue collection. To combat fraud, the agency has forged linkages with a number of regional and international institutions. Modern computerised systems, including the installation of close circuit TVs and x-ray equipment, have been implemented for better control of passengers' baggage and containerised cargo.

## **7.6 FINANCIAL MANAGEMENT AUTONOMY**

Cash management in the Dominican Republic is led by a number of central governing institutions; primarily the National Budget Office, in co-ordination with the National Treasury and the Office of the Comptroller General. Figure 7.1

illustrates the typical process that guided the departments' request for and receipt of funds to pay for goods and services prior to autonomisation.

Repeated checks aimed towards ensuring the accuracy and completeness of submitted documentation and that requests were consistent both with quarterly allocations and the availability of funds as reported by the Treasury. The entire process from receipt of goods/services to actual payment could last well over two weeks in best case and months in the worst.

Although, however, no commitment of funds was valid without approval from the Treasury and the Comptroller General as outlined above, the process was neither interrupted nor delayed without their consent. The revenue agencies continued to incur commitments and to generate internal debt.

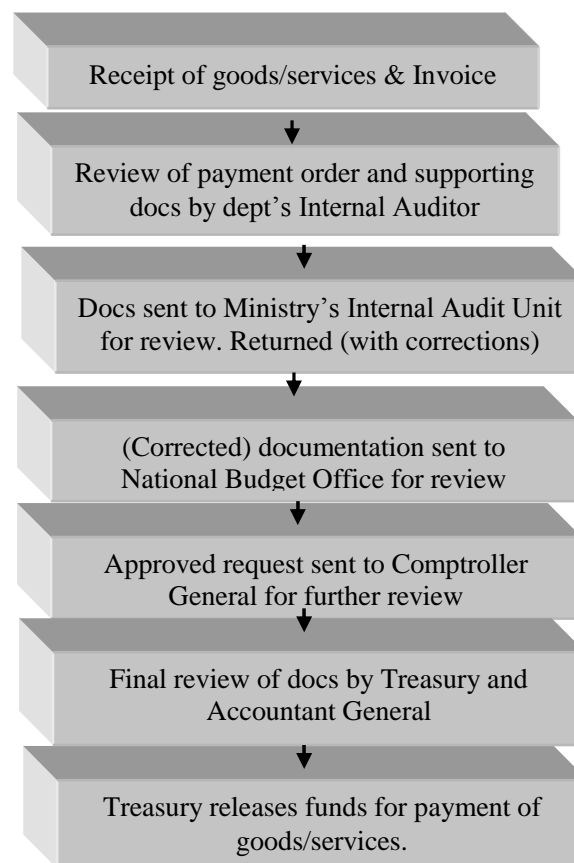


Figure 7.1: Process for Accessing Funds to Pay for Goods & Services



Another area for the informal practice of autonomy in financial management was that of procurement. The 1966 Procurement Act sought to centralise procurement under the Government Procurement Directorate (DGP). However, the DGP's inability to cope with the demands of servicing the needs of all public institutions resulted in public entities having a fair amount of purchasing freedom. Similar to their public counterparts, the two focal entities followed their own internal procurement procedures, making use of practices, some of which (for example, direct contracting) managed to circumvent government attempts at systemic control.

Procedures allowed for the virement of funds within programmes without need for recourse to the Finance Ministry, only for co-ordination with the Budget Office. To transfer funds between distinct programmes, however, a legal instrument authorising such transfer needed to be submitted for final approval by the legislature. Funds could not be shifted from the capital (personal services) or payroll heads without special authorisation from both the Finance Ministry and the Office of the Technical Presidency.

Government's modernisation of the financial management system in 1996 through its introduction of the automated Integrated Financial Management System (SIGEF), and the subsequent decentralisation of SIGEF to all spending units resulted in heavy centralised controls over the public income and expenditure process. Greater transparency was brought to bear on a range of administrative processes such as budget amendments, payment processing and asset accounting.

With autonomisation, the DGII and the DGA assumed a larger degree of financial management authority. Directly responsible for a number of key areas including budget execution, asset acquisition and asset disposal, the departments prepared their own regulations to give effect to provisions within the legislation. Clearly stated in the new laws is that the financial resources over which the departments now have control are to be administered according to the legislation that governs the administration and control of resources of the Dominican State. Delegation of authority in the management of state finances has resulted in central institutions such as the National Budget Office and the Office of the Comptroller General being cast in backend monitoring and oversight roles.

## **7.7 HUMAN RESOURCE MANAGEMENT (HRM) AUTONOMY**

All public personnel functions in the Dominican Republic are regulated by Law 14-91 of May 1991<sup>52</sup> (commonly referred to as the ‘Civil Service and Administrative Career Law’)<sup>53</sup>; its enforcement Regulations No. 81-94 of March 1994; and other supplemental regulations. The law and regulations all fall under the aegis of the National Office of Administration and Personnel (ONAP).

Before autonomisation, the DGA and DGII were only two amongst a number of public organisations which, informally and by default, exercised a great deal of strategic and operational HRM autonomy largely because the laws and

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<sup>52</sup> The practical effect of this law only occurred some four years after its promulgation.

<sup>53</sup> In the DR, the terms “civil service” and “administrative career” have specific definitions. In general, the ‘civil service’ describes a body of law that regulates relationships between the government and its public employees. The ‘career system’, which is divided into two main branches - the administrative career (which includes all jobs in support of tax and customs work), and the tax and customs career (including all technical jobs in these two areas) - is a more general effort to increase the professionalisation and modernisation of the public service.

regulations aforementioned were never properly implemented for three main reasons:

- (1) lack of political will – the rules and regulations for applying the law were not approved until 1994. Even then, the regulations dictated that the law had to be applied first in the Department of Finance, and that only executive orders could mandate the application of the law in other government institutions:
- (2) Structural barriers – having grown accustomed to clientelistic practices in the recruitment and selection of staff, many agency directors erected a number of barriers that hindered ONAP from applying the law; and
- (3) Lack of capacity within ONAP – ONAP lacked sufficient financial backing and personnel with the requisite skills to implement the law.

The DGII and DGA therefore informally exercised such available freedoms in a number of HR policy and programmatic areas such as recruitment, job classification, training, performance management, and disciplinary action. Both organisations had devised bonus schemes for revenues collected in excess of the annual targets as incentives to boost individual performance.

The 2006 autonomy laws formally delegated to the two revenue agencies the authority to define their own organic structures; to determine area jurisdictions by creating, modifying and suppressing regional areas and administrative units in response to global challenges and demands. Authority was granted by law for each department to adopt a non-public sector personnel regime which involved, for example, establishing norms on entry and the setting of their own salary

structures. Certain specified transitory dispositions included the development of an administrative restructuring plan, internal regulations and personnel arrangements adapted to the mandate and objectives of the new legislation.

With regard to the factual exercise of such autonomy, within a year of promulgation of the laws, both organisations had devised the administrative structures and internal regulations with which to improve the agencies' administrative and technical management. Figures 7.2 and 7.3 respectively illustrate the new high level structures of the DGII and the DGA. In March, 2007 the Higher Council of Tax Administration approved both the DGA's organic structure and its internal HR Regulations. The newly devised structure for the DGII, in line with the organisational models of tax administrations in Latin America, was approved in January 2008.

Since April 2007, both organisations have conducted job evaluations, on more than one occasion adjusting pay levels accordingly to the salary scales of the private sector labour market. Salary revisions not only improved on the salaries paid prior to reform, but also streamlined and regularised pay rates by addressing several anomalies that existed as a result of pay differentials amongst jobs involving similar work.

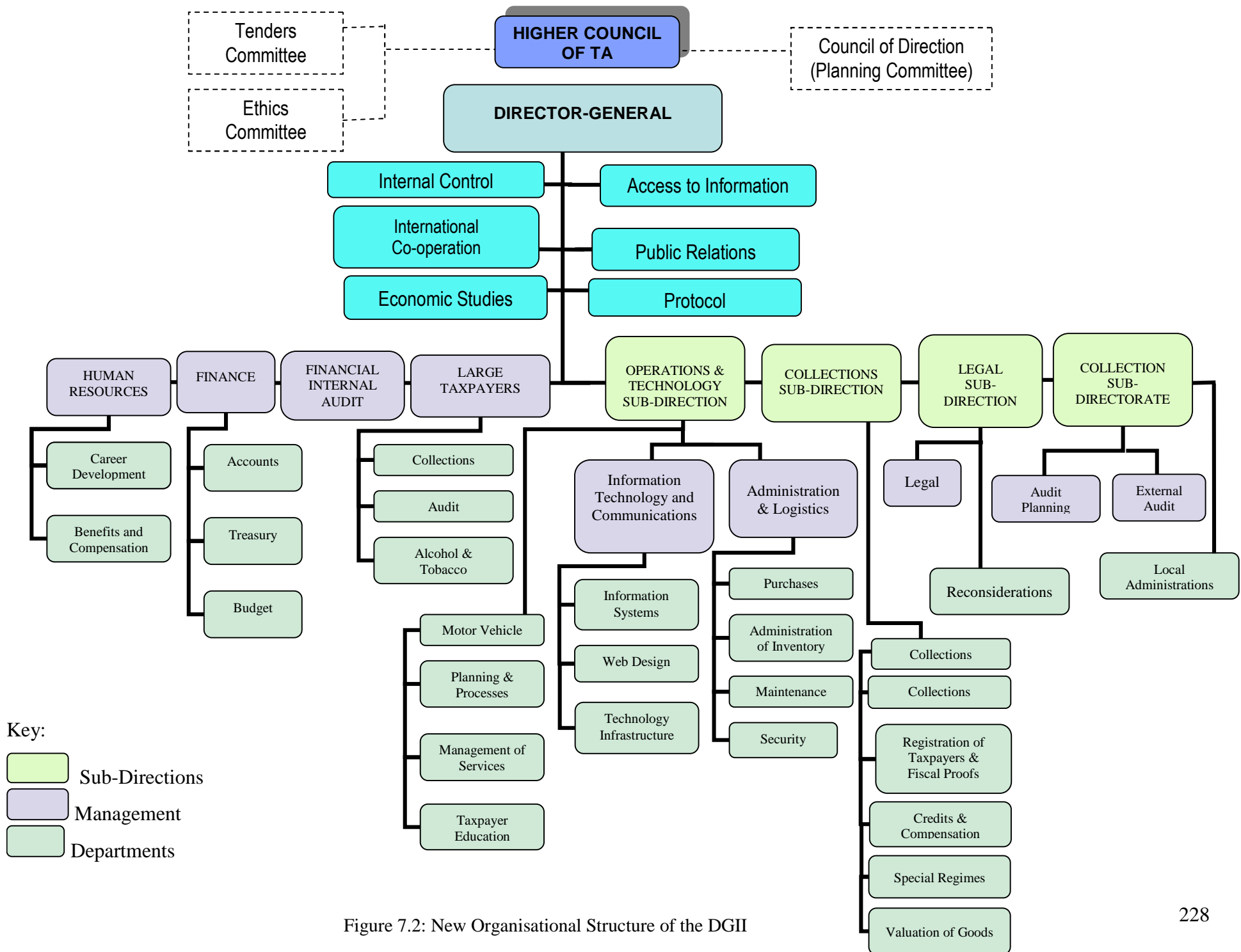


Figure 7.2: New Organisational Structure of the DGII

GENERAL DIRECTION OF CUSTOMS  
FUNCTIONAL ORGANOGRAM

Figure 7.3: Post-Reform  
Organisational Structure of the  
DGA

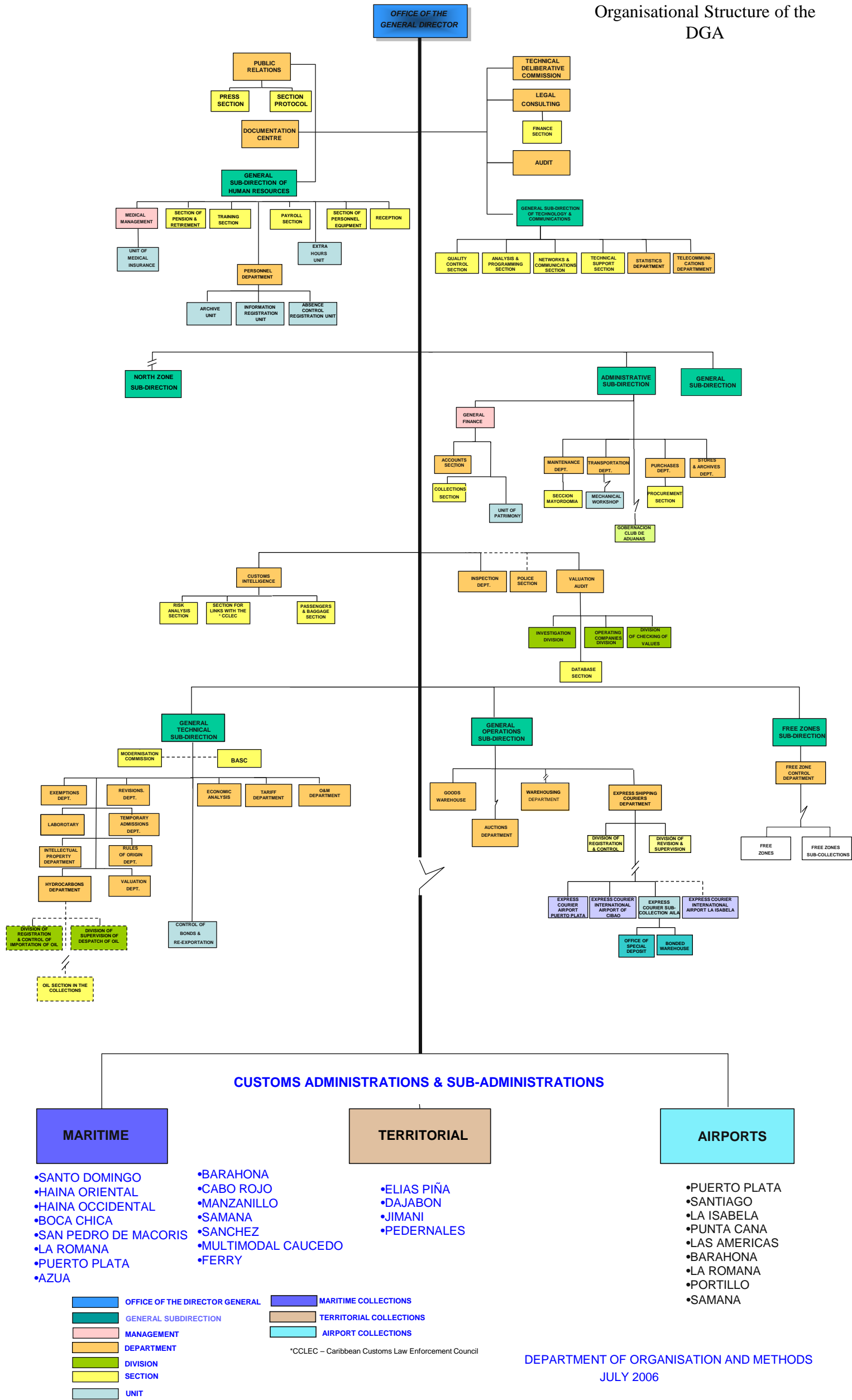


Table 7.1 illustrates salary increases for selected jobs within the DGA over the period January 2007 to January 2008. Since decentralisation, there were two instances of pay hikes, with some lawyers, auditors and accountants realising over 60 per cent pay increases or more than doubling their 2007 annual gross salaries. Comparing 2007 and 2008 pay levels, there is now, for example, greater compression or less spread in the salary range for lawyers, as also for

	B	C	D	E	F	G	H
	PROFESSIONAL JOB CATEGORY	LOCATION	JOB TITLE	GROSS SALARY JAN '07	GROSS SALARY DEC '07	GROSS SALARY JAN '08	% INCREASE JAN '07 / JAN '08
1							
2	EXECUTIVE MANAGEMENT	HEADQUARTERS	GENERAL DIRECTOR	106591	403750	546250	412.47
3	EXECUTIVE MANAGEMENT	OPERATIONS/TECHNICAL/HR SUB-DIRECTORATES	SUB-DIRECTORS	71061	191250	258750	264.12
4	SENIOR MANAGEMENT	EXPRESS COURIERS	HEAD, DEPARTMENT OF PRIVATE COURIERS	58500	135000	172500	194.87
5	SENIOR MANAGEMENT	DEPARTMENT OF VALUATION AUDIT	HEAD, DEPARTMENT OF AUDIT	91000	135000	172500	89.56
6	SENIOR MANAGEMENT	AUDIT DEPARTMENT	HEAD OF DEPARTMENT	65000	100890	122130	87.89
7	LEGAL	DEPT. OF VALUATION AUDIT	LAWYER	15465	37500	43125	178.85
8	LEGAL	LEGAL DEPARTMENT	LAWYER	25823	37500	43125	67.00
9	IT	TECHNOLOGY & COMMS. SUB-DIRECTORATE	PROGRAMMER	29980	54500	62675	109.06
10	AUDITING	AUDIT DEPARTMENT	AUDITOR	35000	77406	91770	162.20
11	ACCOUNTING	ACCOUNTS DEPARTMENT	CASHIER	20800	27100	31165	49.83
12	ACCOUNTING	ADMINISTRATION, HAINA ORIENTAL	CASHIER	8260	16200	18630	125.54
13	ACCOUNTING	ACCOUNTS DEPARTMENT	ACCOUNTANT	26000	37500	43125	65.87
14	CUSTOMS	TECHNICAL SUB-DIRECTORATE	COLLECTOR	70000	100700	121900	74.14
15	CUSTOMS	DEPTO. SUB-DIR. OPERATIVA	COLLECTOR	70000	135000	172500	146.43
16	CUSTOMS	CUSTOMS INTELLIGENCE UNIT	INSPECTOR OF CUSTOMS	13113	28300	32545	148.19
17	CUSTOMS	VALUATION AUDIT DEPARTMENT	VERIFICATION OFFICER	22675	37500	43125	90.19
18	CUSTOMS	UNIT, SANTIAGO	DEPUTY COLLECTOR	24783	58103	68885	177.95
19	CUSTOMS	ADMINISTRATION, CAUCEDO	SUPERVISOR OF CUSTOMS	16608	28300	32545	95.96

Table 7.1: Customs Salary Hikes for Selected Jobs, January 2007 - January 2008

other job groupings. According to the Assistant Director, Human Resources in the DGA, improvement in conditions of service not only made it possible for the institutions to recruit professionally qualified staff but was also one way of reducing the high attrition rate in these critical areas.

Focusing on the DGII, Figure 7.4 highlights the internal career system devised to give effect to Law 14-91. The system is intended to promote equality of opportunity for entry into the organisation, as well as professionalisation of employees through continuous training, and greater opportunities for promotions. Whilst the HR department continues to recruit personnel for administrative support jobs, most managerial and technical positions (approximately 85%) are now filled via a competitive process using external consulting agencies. During 2007, four externally managed processes of recruitment were effected with a total of 290 new auditors being incorporated into the organisation. Training needs

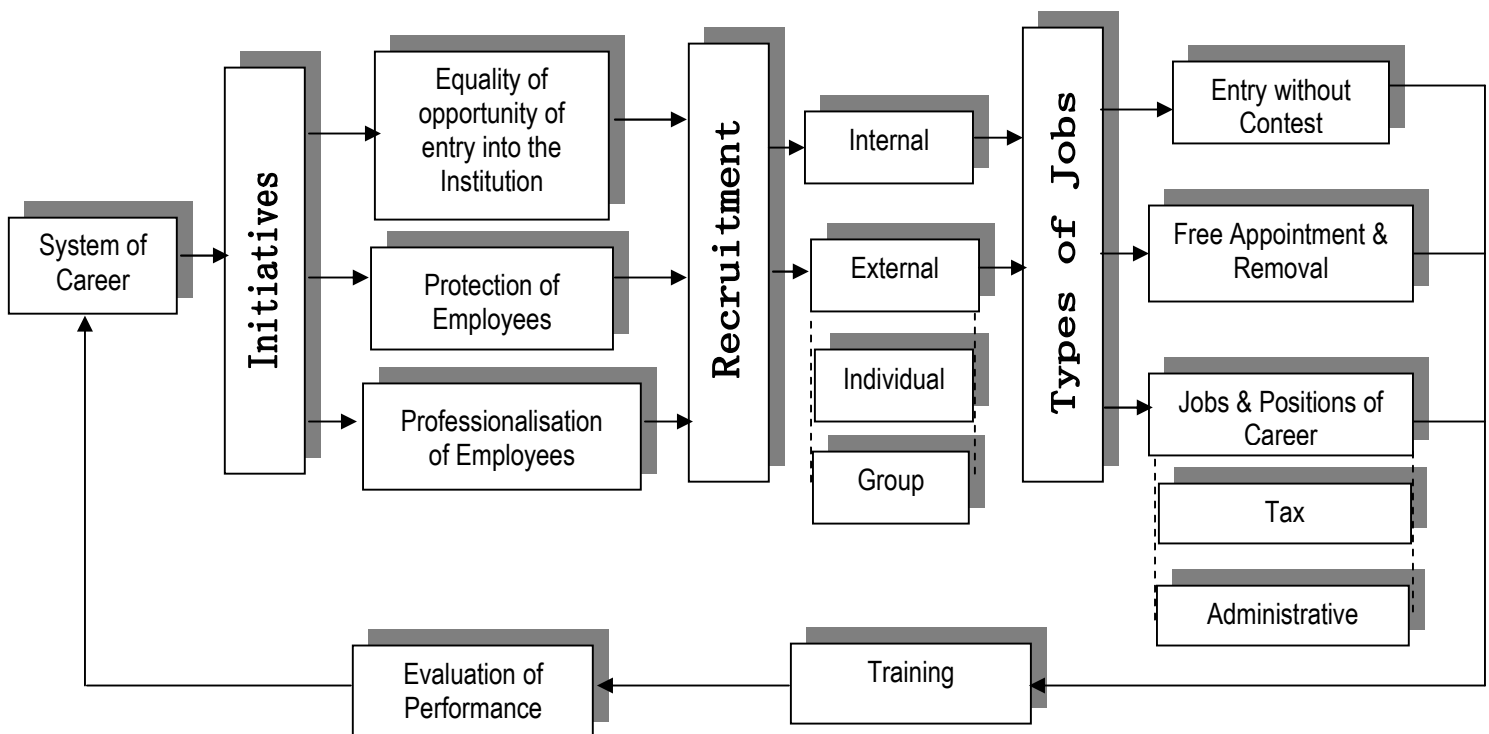


Figure 7.4: Career System of the DGII

analyses continue to be conducted and training plans devised annually to develop both technical and generic skills, with courses being delivered at the national and regional levels.



Autonomy in the area of human resource management, which was informally practiced by the DGA and the DGII was now codified and formally delegated as part of the autonomy laws. The agencies used such autonomy to develop appropriate internal norms and standard that would allow for the efficient and effective management and development of human resources.

## **7.8 INTERVENTIONAL AUTONOMY**

Already mentioned was the role of central institutions such as the National Budget Office (ONAPRES), the Office of the Comptroller General (OCG) and the National Treasury in the ex-ante oversight and ex-post review of agency performance. In the area of revenue reporting, both focal organisations submit to the President, the Finance Secretary of State and ONAPRES a daily report on the fiscal incomes collected the previous day, as well as a weekly report to the latter on all charges against allotments.

Both agencies faced a number of other encroachments upon organisational freedoms. Internal Audit Units (IAUs) established within each agency by the OCG conduct ex-ante reviews of all payment transactions, as well as ex-post audits of non-financial performance. According to the Head of Organisation and Management in the DGA, the work of the IAUs not only continues to add little value, but results in additional procedures due to its overlap with the functions of the Budget Office. Also playing a central role in the internal audit of processes is the General Directorate of Government Accounting (DIGECOG). DIGECOG assesses, on a quarterly basis, the implementation of standards, procedures, and

accounting systems, ordering prescribed adjustments deemed appropriate. External audit is conducted by the Audit Commission or Accounts Chamber (*Camera de Cuentas*).

Post-autonomisation, administrative freedoms have been enlarged in the sense of a reduction in the required frequency of reporting. Likewise with regard to auditing, this function has now shifted from a primarily frontend operation to a more backend process.

## **7.9 BUREAUCRATIC AUTONOMY AND ACCOUNTABILITY**

Autonomy laws 226-06 and 227-06 clearly outlined the scope of delegated authority and the length of distancing of the revenues agencies from central government control. The need however, to strike an intricate balance between autonomy and accountability resulted, as mentioned earlier, in the near immediate passage of law 494-06 to roll back some of the initially granted authority.

Built into the legislation are a number of provisions aimed at ensuring that the departments remain accountable to government, stakeholders, and the wider general public for actions undertaken in the execution of fiscal policy. One such provision states that, independent of dispositions of the present laws, selected plans and programmes, and the general administrative management of the institutions must, at all times, be aligned with the economic policies of the State, and comply with the goals of collection established by the Executive Branch. The newly decentralised entities would therefore continue to submit to all the fiscal, economic, and tax politics of the central government through its various

competent organs. Such directives have resulted in the DGII, for example, putting in place measures to ensure the systematic preparation and periodic publishing of performance reports that enable analysts and civil society alike to assess the manner of execution of fiscal policy and the impact of such actions.

In the management and development of human resources, the agencies are still expected to follow certain guidelines in operation for other public service institutions, which include the use of competitive criteria for recruitment and promotions. Both organisations therefore now base their recruitment processes on open contest for specialist tax and customs positions.

## **7.10 CONCLUSION**

This chapter presented findings on the nature and extent of autonomy delegated to and exercised by the investigated revenue agencies in the DR, both pre- and post-reforms. Table 7.2 provides a summary of the formal autonomy delegated to the revenue agencies along the various dimensions discussed.

Pre-reform, the agencies, which operated as separate institutions headed by officials appointed by the President, had no separate legal basis. Structural arrangements ensured that the organisations remained within close proximity to the parent ministry, and that controls could be easily exercised over agents by political principals.

DIMENSIONS OF AUTONOMY	DOMINICAN REVENUE AGENCIES
LEGAL AUTONOMY	<p><b>Legal Basis:</b> Laws 226-06 and 227-06 of June 21, 2006 established the Customs (DGA) and the Internal Taxes (DGII) as decentralised semi-autonomous agencies.</p> <p><b>Legal Status:</b>  (a) <b>Pre-Reform:</b> No legal basis outside of central government structure. Departments functioned as dependencies of the Ministry of Finance.  (b) <b>Post-Reform:</b> Departments established as public right entities with their own legal personality. Agencies vested with functional, economic, financial, technical and administrative autonomy, with legal capacity to enter into agreements and contracts.</p>
STRUCTURAL AUTONOMY: (GOVERNANCE ARRANGEMENTS)	<p><b>Pre-Reform:</b> No intermediary Board. Agency heads appointed and subject to dismissal by the President to whom they report through the Secretary of State, Finance.  <b>Post-Reform:</b> Departments reconstituted as semi-autonomous agencies. Roll-back of initial degree of structural autonomy with the passage of Law 494-06 and introduction of intermediary board model (Higher Council of Tax Administration). Same method of reporting. Most high level strategies submitted to the Higher Council for approval.</p>
FINANCIAL AUTONOMY: (FUNDING MECHANISM)	<p><b>Source of Funding:</b>  (a) <b>Pre-Reform:</b> Funding via standard legislative appropriations. Warrant system replaced transaction-based approvals. Funds released on a monthly basis based on submitted quarterly warrant. Limited ability to extend funding.  (b) <b>Post-Reform:</b> Funding regime based on a percentage of collection.  (i) <b>Customs:</b> 2-tiered funding mechanism. Income derived from 4% of effective collection obtained each month, plus 0.4% of the cost, insurance and freight (C.I.F) on imports charged as customs user fees.  (ii) <b>Internal Taxes:</b> Income derived from 2% of actual collection obtained each month.  Both departments able to extend funding via means such as sale of property, proceeds of programs of international cooperation, and loans from private financial companies.</p> <p><b>Transfer of Funds:</b> Automatic release of funds by the Treasury within the first 5 working days of each month.</p>
POLICY AUTONOMY	<p><b>Both Pre- and Post-Reform:</b> Departments expected to adopt the relevant institutional politics (norms, programmes, systems and processes) pertinent to guaranteeing the best fulfillment of mandated functions. Leverage therefore granted for agencies to devise new strategies and to introduce new services provided they can be financed from budgetary appropriations and they align with national policies.</p>
MANAGERIAL (A. FINANCIAL MANAGEMENT) AUTONOMY	<p><b>Pre-Reform:</b> Ability to establish own internal procedures for procurement of goods and services. High degree of formalisation of controls over budget execution, asset management and asset disposal. Ability to vire funds only within programme heads.  <b>Post-Reform:</b> Departments prepare own regulations based on set public policy. Funds to be administered according to the legislation that governs the administration and control of the resources of the Dominican State.</p>
MANAGERIAL (B. HUMAN RESOURCES MANAGEMENT) AUTONOMY	<p><b>Pre-Reform:</b> Informal autonomy in a number of HR policy and operational areas including recruitment, job classification, training and performance management.  <b>Post-Reform:</b> Formal autonomy to establish own internal norms for the HR system (e.g staffing establishment and skill mix, position classification, salary levels and conditions) subject to approval by the Higher Council of Tax Administration.</p>
INTERVENTIONAL AUTONOMY	<p><b>(I) Pre-Reform:</b>  a) <b>Reporting Requirements:</b> Daily reports on fiscal incomes submitted to the President, the National Budget Office, and the Minister of Finance. Submission of weekly reports to the Budget Office on all charges against budgetary allotments.  b) <b>Audit Provisions:</b> Various central agencies responsible for front and backend auditing of financial and non-financial operations.  <b>(II) Post-Reform:</b>  a) <b>Reporting Requirements:</b> Daily reports on fiscal incomes still part of fiduciary responsibility. Some alterations in the frequency of reporting in some areas.  b) <b>Audit Provisions:</b> Audit function shifted more to the backend of processes.</p>
ACCOUNTABILITY TOWARDS STAKEHOLDERS AND THE GENERAL PUBLIC	<ul style="list-style-type: none"> <li>- DGII's monthly publication of performance data on internet webpage. No such undertaking by the DGA.</li> <li>- Publication of Annual Reports by both agencies.</li> <li>- Both organisations engage in public consultation with respect to the exercise of their revenue collecting and rule-making powers.</li> </ul>
TRANSITORY PROVISIONS DURING REFORM	<p>Employees continued to exercise their duties and functions as personnel of the revenue departments. Legal provision for a 6-month transitory period for departments to put in place the systems and procedures to give effect to the new arrangements.</p>

Table 7.2: Degrees of Formal Autonomy of the Dominican Revenue Agencies

Both entities exercised limited formal and factual autonomy in the areas of financial and financial management, with also limited interventional autonomy from a number of central government institutions. Total financial resource dependence on central government appropriations, with limited opportunity to extend funding via external sourcing, hamstrung the agencies in the execution of programmes. Heavy centralised controls and a high degree of formalisation characterised the whole public income and expenditure process, a great deal of checking and double-checking resulting in duplication, inefficiencies and delays.

Whilst resource dependency and centralised controls allowed for limited flexibilities in financial, financial management and interventional autonomy, both agencies, pre-reform, exercised a fair amount of informal autonomy in a number of areas. Actual use of informal policy autonomy resulted in the conceptualisation and implementation of programmes and (sub) processes designed to achieve the efficiency gains sought as the primary goal of customs reform, as well as effectiveness in tax collection. Lack of legitimacy of central institutions such as ONAP, as well as the lack of capacity of central institutions charged with the direction and oversight of procurement and HR functions resulted in a high level of informal freedoms. Such flexibilities were applied to purchasing goods and services; to vireing and expending funds, sometimes without prior expressed approval; as well as to recruiting and selecting staff and managing performance.

Far-reaching structural and operational changes, part of fiscal administrative reforms that took place in 2006, enlarged the discretionary decision-making space of the revenue agencies. Still to operate as separate revenue collecting bodies,

the departments were now constituted as legal entities in their own right, with capabilities that made them far more removed and independent of the central government machinery than their pre-reform status.

Structurally, whilst the initially conceptualised fully empowered internal Board of Directors model had the advantage of endowing the DGII and the DGA with far-reaching decision-making competencies and actual capacities to act, government's rethink of the scope of such delegations and the implications for political accountability resulted in the more strategic decision-making competencies involving, for example, the approval of organic structures, annual budgets, institutional plans and strategies, now being the preserve of the Higher Council of Tax Administration. The departments are therefore now pitted in a dependency relation with the Higher Council in some aspects regarding legitimacy of policies and programmes.

Reduced financial dependence on central government funding through the new percentage of collection funding regime and the mandated automatic release of funds, plus the capacity to tap alternate sources of financing, resulted two years later in improved operational efficiencies and marked increases in overall revenue yield largely as a result of being able to implement various policies and programmes. Research findings showed that reform only served to formalise the previous informal autonomy practiced in the areas of policy implementation and human resources management. Actual capacity to act post-reform led to the development of organic structures that would better allow for more flexible, more modern and responsive tax and customs services, and to the adoption of a non-

public sector regime that permitted a reversal of previous high attrition rates and the recruitment and selection of the right persons at the right time in the right positions.

Autonomisation, while not leading to a total break with the past in terms of a relinquishment of centralised controls over public expenditure and requirements for reporting on performance, did result in a scaling back of previous controls, with a marked reduction in the amount of front-end approvals, monitoring and oversight, to more back-end ex-post controls. Such a move served to propel the organisation over time from a micromanaged transaction-led organisation to a more efficiency-driven institution with greater capacities for managing input, process and output flows.

The following chapters will now present findings on the second major component of the research which involves an analysis of influences on the practice of bureaucratic autonomy.

## **CHAPTER 8**

### **FACTORS CONDITIONING AUTONOMY: THE JAMAICAN CASE**

#### **8.1 INTRODUCTION**

This chapter presents findings on factors conditioning the practice of bureaucratic autonomy at the three levels of analyses (macro-, meso- and micro-) for the Jamaican case. The findings are presented starting at the broader macro-institutional level to show how these filter through to the internal organisational level of functioning.

#### **8.2 THE IMPACT OF MACRO-LEVEL FACTORS ON AUTONOMY**

Chapter 3 highlighted the issue of organisational functioning within superordinate social systems, their embeddedness within broader institutional frameworks, and the usefulness of exploring the potential impact of contextual factors on the exercise of bureaucratic autonomy. The following sections present findings on the actual influence of such environmental factors on bureaucratic functioning; in particular, interest group participation, the legal/administrative framework, legal tradition, and system of government.

Figure 8.1 provides a graphic illustration of some of the key institutions within the very complex and multi-faceted revenue administrative environment. A number of the linkages serve, amongst other things, to enable co-ordination, to maintain a



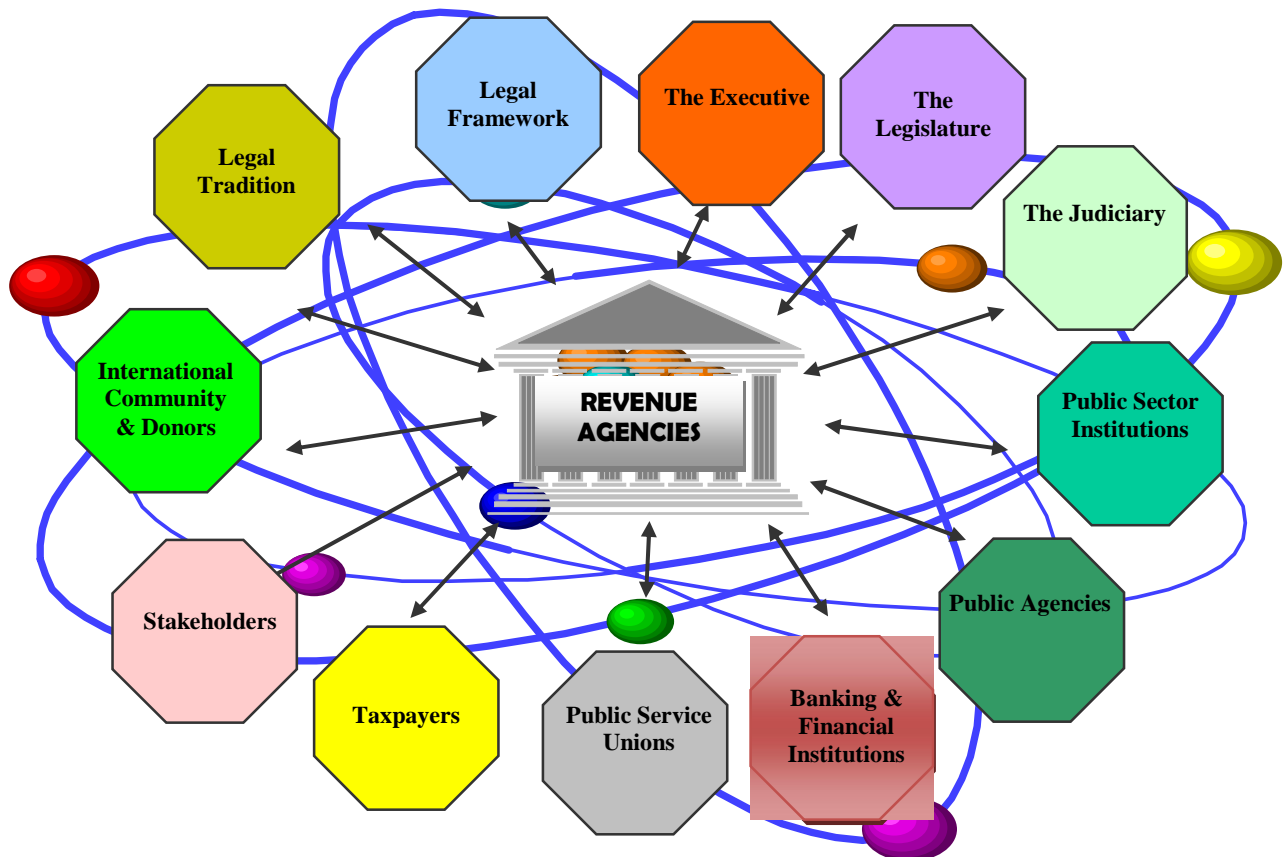


Figure 8.1: The Institutional Environment of Revenue Administration in Jamaica

Source: Adapted from Gill (2003:5)

certain measure of governmental controls, and to facilitate increased accountability.

### 8.2.1 INTEREST GROUP PARTICIPATION

Interest groups within the institutional environment of the tax and customs departments in Jamaica that have the potential to impact on bureaucratic autonomy primarily comprise taxpayers<sup>54</sup>, private sector associations, public

<sup>54</sup> 'Taxpayers is used as an all encompassing word to include those subject to domestic taxes as well as importers, exporters and their representatives subject to duties and taxes from their involvement in international trade.

sector unions<sup>55</sup>, the media, and the general public. Whilst some of these entities support and advance the practice of autonomy, others constrain bureaucrats in their exercise of administrative discretion. In some instances, case in point the public sector unions, behaviour is contingent upon the issue of the day.

As part of efforts to demonstrate accountability, both the Inland Revenue and Customs departments actively encourage the participation of their respective stakeholders in the planning and operational functioning of the organisations, in some cases co-opting entities onto internal committees. The IRD holds regular meetings with umbrella bodies and professional associations such as the Institute of Chartered Accountants and the Banking Association. Customs likewise meets with its constituents, including the Jamaica Chamber of Commerce (JCC) and the Customs Brokers Association, during monthly meetings of its Quality Assurance Committee. Such meetings provide forums for information sharing on trade and trade-related issues, plans for reform and modernisation, the (proposed) implementation of new initiatives, as well as updates on matters under review. During TaxARP, the Jamaica Civil Service Association (JCSA) was offered a seat on the selection panel to recruit persons to new positions within the Tax Administration. The JCC was the only body appointed to the Steering Committee during the Customs Modernisation programme. These stakeholders have, in the majority of cases, engendered buy-in amongst members for a number of initiatives, thereby facilitating tax compliance and enhancing the ability of the departments to serve its clients.

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<sup>55</sup> The main bodies representing the interests of public officers are the Jamaica Confederation of Trade Unions and the Jamaica Civil Service Association.

This does not mean, however, that all has been a bed of roses interfacing with these institutions. The Customs Department has, on occasion, faced from various stakeholder groups threats to its autonomy to interpret regulations and to make and alter rules. Lack of agreement with the JCC on what should have been included on a list of personal allowances for travellers who are citizens of Jamaica resulted in the department's decision to review the regulations which resulted in the re-issue of a new revised list. A decision to stop moving containers by road between Kingston and Montego Bay in the interest of security met with stiff opposition from the trading community. Likewise the decision to draw more used car dealerships into the tax net to boost general consumption tax (GCT) revenues. After years of repeated recommendations to government for a change to the GCT legislation, used car dealers, who were in the habit of withholding the payment of outstanding GCT after the sale of vehicles, were now being forced as of September 2006 to either pay all duties and taxes upfront, or establish bonded warehouses where the duties are paid over after the removal of the vehicles from the warehouse for sale. The new system would require either a doubling or trebling of the cash flow of used car dealers or their ability to negotiate bonds to develop the new facilities.

In both cases involving decisions relating to the containers and the used car dealership, the parties involved made representation through lobbying Cabinet Ministers for a reversal of decisions either implemented or initiated by the bureaucracy. In the case of the used cars policy, the ballooning of tax arrears by this time had far outweighed the social issues involved in regulating the operation,

hence the support from government for the decision of the Customs department on this issue. In other cases, however, where groups have strong lobbies in the Cabinet, the departments were forced to arrive at some form of compromise with the involved stakeholders.

Whilst some interest groups impact negatively on the capacity of the revenue agencies to use their discretion, others provide the organisation with opportunities for discretionary action. One such entity within the Customs operating environment is the United States Customs and Border Protection (CBP), which works closely with the Jamaica Customs as part of the Container Security Initiative (CSI). CSI is a security regime to ensure all containers that pose a potential risk for terrorism are identified and inspected at foreign ports, before they are placed on vessels destined for the United States. Under CSI, a team of CBP officials are deployed to work with host Customs administrations.

Regarding the vested interest of the U.S. CBP, one of the minimum standards for a country to be eligible for CSI is that its seaport must have 'regular, direct and substantial container traffic to ports in the U.S. Because shipments have already been jointly examined by the U.S and the host country customs officials, this reduces the amount of examination which CBP has to deal with at the U.S. port. This allows CBP to focus more attention on high risk shipments that have not been pre-screened.

Customs official interviewed at the Port commented that the CSI functions as a co-operative effort as stated as the objective of the initiative. CBP officers operate

in accordance with the guidelines of the host country whereby host officials conduct the examination and CBP officials observe the security screening. In terms of opportunity, membership of the CSI programme has resulted in Jamaica being able to counter its lack of financial autonomy to purchase much needed resources. Donations of imaging equipment, radiation detection and gamma x-ray equipment have been made by the U.S. government to the government of Jamaica. The initiative has provided an opportunity for the substitutability of the U.S government as an alternate source for the acquisition of critical resources.

Focusing on the media and members of the general public, tax administrators are hardly subject to challenges to their decisions and to criticisms from such groupings. According to one academic, if administrative decisions are deemed harsh or unfair, it is the Minister or the Finance Ministry which bears the brunt of the criticism. If finance decisions are taken which result in money being wasted on unwise or unaccountable spending, it is the integrity of government that comes under attack. This, it was argued, might be a function of Jamaica's political culture:

‘It might be the result of a tendency to politicise issues rather than an orientation towards functional analysis of public institutions. The former is good theatre and the latter does not sell newspapers.’

Dealing with public service unions is somewhat of a mixed case. Most public officers in Jamaica are members of the JCSA. Historically, public service unions have posed little threat to administrative decisions of the revenue departments. In the implementation of reforms, initiatives such as the use of psychometric testing in the recruitment and selection process, the introduction and operation of a new

performance appraisal system, automation, reorganisation through changes to office opening hours in some locations as part of efforts to improve quality of service delivery were all introduced free of challenges to policy and human resource management autonomy. According to the General Secretary of the JCSA, lack of challenges and pressures was due to recognition of the need for a change in which government operated vis-à-vis changing global market realities; that it could no longer be a case of business as usual, and the need therefore to assist the departments in their preparedness for modernisation.

Unfettered exercise of managerial prerogative was to change, however, during the two-year period 2004-2006, with the signing of historic accords or agreements between the Government of Jamaica and the Jamaica Confederation of Trade Unions (JCTU). 2004/05 witnessed the signing of the first Memorandum of Understanding (MOU1), with MOU2 signed for the FY 2005/06. These bi-partisan corporatist arrangements and acts of voluntarism came about as a result of poor macroeconomic conditions in Jamaica which necessitated the arrival of a national compromise between the government and the public sector trade unions. In order to reduce a spiraling budget deficit, the partners agreed to an overall strategy of wage restraint and macroeconomic management. In exchange for wage restraint by the major unions – a 3% increase or a cap of 20% on the wage fund over the next 2 years - government committed to pursuing complementary fiscal and monetary policies that would maintain macro-economic stability and accelerate real economic growth over the medium to long term. The policy was to apply to all remuneration under contracts of employment for any kind of work to be performed

in the public sector of Jamaica, and to include restraints on expenditures such as the purchase of motor vehicles and office equipment, social functions, rental of property, and foreign travel. Items were to be made line items in the budget and reported on quarterly with reports submitted through the respective accounting officers to the Ministry of Finance and Planning, with the application of sanctions as soon as breaches were confirmed. Established within the MoF was a Post Operations Committee to monitor the activities of the departments to ensure compliance with the Agreement. During the period of restraint, there would be no reclassification of positions, except for special cases which had to be submitted for approval by the monitoring Committee. All recommendations for the filling of vacancies needed to be accompanied by an approval letter from the Committee. Initially, the revenue departments were required to seek permission to employ new staff when there was a resignation, or the post was vacant and needed to be filled. After the first year into the agreement, the departments only needed to seek approval to employ persons in positions which had been vacant for over a year. The onus was therefore on the revenue agencies to ensure that positions were not open for any length of time. Conditioning the departments in their use of the human resources autonomy granted them two years earlier, the MoU resulted in both organisations having to constantly maintain a high level of vigilance over their staffing complement.

## **8.2.2 THE LEGAL-ADMINISTRATIVE FRAMEWORK**

### **8.2.2.1 The Legal Framework**

The legal framework of revenue administration in Jamaica comprises the Revenue Administration Act (1985); the Revenue Administration (Amendment) Act (1999); individual taxing and customs legislation - the Income Tax Act (1955), the Customs Act Cap 89 (1941), the Tax Collection Act (1867), and the General Consumption Tax Act (1991); as well as other general laws impacting on the administration of taxes. Both focal organisations look to the existence of a legal framework that will not only facilitate the practice of administrative discretion on a number of fronts, but would also increase levels of interventional autonomy through minimal requirements for third-party involvement in the bureaucratic decision-making process.

Pre-TaxARP, the focal organisations were severely handicapped in their auditing and investigation work either due to legal prohibitions or lack of requisite legal powers. Major prohibitions related to the exchange of information between the various revenue departments, and to obtaining third-party information regarding taxable transactions from sources such as banks, financial institutions, accountants and attorneys-at-law. No formal mechanism existed whereby information relating to individual taxpayers was routinely shared between the tax departments. In fact, the different Revenue Acts prohibited the disclosure of information unless expressly authorised by the Minister. Lack of powers was most seriously felt in areas of search and seizure, impounding of books and the imposition of penalties for various defaults. The departments were also



constrained by the fact that electronic signature was not recognised by law. The Customs Department, for example, while it had designed and implemented most of the systems required to facilitate e-commerce (automated manifesting and entry processing), the old manual system of submitted paper copies overlaid on the automated regime continued because electronic signatures were not yet legal. This made it difficult for the department to extend e-commerce initiatives to include e-filing and e-payment. These legal hurdles prevented the focal organisations from implementing policies and programmes that would allow them to reach incriminating evidence that would help them to establish and penalise tax evasion and thus set up a credible deterrent to spur voluntary compliance. Inability to make full use of newly designed automated systems and processes not only resulted in duplication of effort, but in essence served as a rein on reform and advancement of the modernisation process.

The priority assigned to legislation during the implementation process of TaxARP was briefly mentioned in chapter 5. Extensive amendments to the Revenue Administration Act (1985) via the Revenue Administration (Amendment) Act (1999) (RAA Act) resulted in changes directed at: enabling information exchange between the different government agencies; strengthening the enforcement powers of the revenue departments; removing ambiguities and loopholes in the legislation that created unintended tax avoidance opportunities; and increasing penalties for non-compliance. Legislative response to informational disadvantages resulted in a relaxing of the principle of fiscal secrecy enshrined in the revenue laws, thereby allowing the revenue laws to share information on taxpayer

transactions. In relation to enforcement, amendments to the Revenue Administration Act include enhanced powers relating to search and seizure, and the impounding of incriminating documents. Focusing on penalties, the various revenue laws, which incorporate sanctions of both civil and criminal nature, have witnessed a number of amendments. The Customs Act was revised in 2004 to introduce significant increases in penalties for customs infractions. In some instances, flat rate penalties in key provisions have been replaced by sanctions carrying a minimum and/or maximum exaction to ensure their economic practicality, and expressed as a percentage of the delinquency, sometimes as much as treble in cases where a fraudulent act has occurred. Penal provisions of the tax laws likewise were revisited to ensure that these have adequate deterrent effect.

Whilst modifications to the legal framework have enhanced the powers of the focal organisations to exercise greater autonomy to devise and implement programmes and initiatives to ensure efficient and effective tax collection, a number of serious shortcomings in the revenue laws still remain. One major barrier relates to the continuing need for tax authorities to depend on the judiciary both for obtaining information from third parties and also for securing compliance with even the procedural provisions of tax laws.

Regarding third party information, modern economic activity involves extensive banking and financial transactions. While taxpayers disclose some transactions in their returns, many others remain concealed. In order to enforce revenue laws and curb tax evasion, authorities need access to such information which involves

having the power and authority to requisition the information from third parties, including banks and financial institutions. To access third party information, section 17G of the RAA Act specifies that the revenue Commissioner must apply for an Order to a Judge in Chambers, who may require the production of the information, if satisfied that in all circumstances there are reasonable grounds for granting the Order and, the information has been requested from the taxpayer without success. Such provisions, where reasonable grounds must be ascertained and certain conditions satisfied *ex ante*, introduce a high level of judicial discretion into the equation, often resulting in inefficient enforcement.

Not only the revenue laws, but other national laws also present major barriers to effective enforcement. These include the Bank of Jamaica Act (1960), the Banking Act (1992), and the Financial Institutions Act (1992), with various secrecy provisions that prohibit the disclosure of case-specific information involving the transactions of their clients. Under section 45 of the Banking Act, any bank official who divulges information regarding the money or relevant particulars of the account of a customer, is guilty of an offense, except in cases where the information is disclosed in connection with civil proceedings, the disclosure is made on the written direction of the Minister for the purpose of the investigation or prosecution of a criminal offense, or the disclosure is required by virtue of an Order of the court.

Lack of third party co-operation and constraints to bureaucratic functioning as a result of the requirement for judicial involvement have resulted in repeated calls from the bureaucracy for amendments to these pieces of legislation - calls which

have been met with stiff opposition from the business community and banking lobbyists interest groups. Government's position and its inertia with regard to action on the matter was explained by the Finance Minister, Dr. Omar Davies:

“There is a great deal of international pressure – certainly with tax and financial legislation – with the international community currently on a path to blackmail everybody to go the same route. Even though we fully understand and appreciate the challenges relating to fraud, money laundering and terrorism, we are also cognizant of the potential dangers of giving the Revenue discretion in this area, which could lead to abuse. The reality of the situation is that the law ensures that requests for such information come from higher levels in the process, that the authorities have to apply through the courts, and that persons must be aware that such applications have been made. Such matters border on the invasion of privacy and beg the question as to how far one should be able to pry into people's business”.

The current system of tax laws also impacts on bureaucratic interventional autonomy by making the tax authorities highly dependent on the judiciary for securing compliance with procedural provisions of tax and customs laws. Regarding non-compliance, instead of the use of administrative sanctions that are automatically applied, revenue laws make provision for fines which require judicial enforcement. Routine defaults, such as failure to: file returns, furnish requested information, or appear before the Revenue when summoned, have been made offenses punishable by fines and terms of imprisonment. Making these defaults offenses means that in order to punish defaulters, the revenue agency has to file a case before the court: since by itself it can do nothing. While such provisions may therefore appear impressive on paper, in reality, exclusive reliance on the judiciary for the imposition of fines and penalties creates many difficulties for the

bureaucracy, problems stemming from inordinate delays as a result of the backlog in the system. Whilst not disputing the need for maintaining the judiciary's pre-eminence in deciding questions of law, highly recommended by the Consultants during the early reform stage was the need for the revenue agencies to be given direct powers to impose penalties for most defaults, and for the present prosecution proceedings, if considered necessary, be retained for use only in serious cases of tax evasion.

The situation as described above is further compounded by a legal framework which incorporates a blend of national and supranational laws. Constraints arise from institutional norms relating to Jamaica's membership in the World Trade Organisation (WTO), its signing in March 1995 and implementation in June 2002 of the WTO's Agreement on Customs Valuation (ACV), which aims at trade facilitation and a minimum disruption of the goods supply chain.

Prior to 2002, valuation of imports was based on the Brussels Definition of Value (BDV). BDV advocates the assignment of customs values determined on the basis of the normal price, i.e. the price that goods would fetch on the market between unrelated buyers and sellers. Whilst the use of invoiced prices is strongly recommended, where this is not possible, for example in cases where declared values are suspiciously low, Customs administrations have discretion to use other suitable means for construing the normal price using any available information. In order to protect revenues, the Customs Department developed and continually updated its database of minimum values to be used as the normal market value for fraud-sensitive or high risk goods. Dissatisfaction with declared values at

points of entry usually resulted in reassessment through the upliftment and application of minimum values, without need for justification.

Bureaucratic flexibility of the kind described above was to be severely curtailed consequent to the adoption of the binding ACV, with its extensive and detailed provisions outlining the specific methods to be used for customs valuation. One major provision relates to the procedure to be followed in cases where Customs administrations have reason to doubt the truth or accuracy of declared values. According to Article 13 of the ACV, where values are in dispute, goods should be released with a deposit or surety to cover the additional duties and taxes at risk.

Supranational legislation prohibiting the use of minimum values has resulted in numerous problems for customs officials. According to the Head of Valuation Verification, layering a system such as the ACV, which is predicated on voluntary compliance, atop a system where there is culture of non-compliance, is not in the best interest of a country such as Jamaica.

Despite these various legal constraints, one pertinent issue remains the extent of use by the bureaucracy of those powers which have actually been granted under the various revenue laws. In the words of one tax specialist 'getting the legislation or authority is one thing, plucking up the courage to use it is another'. Here, this researcher noted marked differences in the actions of the two focal organisations.

Officials within the Inland Revenue Department spoke of the organisation's poor track record for enforcement of tax laws. The department was accused of being 'soft' in terms of its misdirected focus on 'informed' as opposed to 'enforced'

compliance, with the resulting accumulation of a huge amount of tax liabilities. Such views reinforce earlier IMF findings in its 2006 Evaluation Report about the reluctance of the department to use its powers relating to the imposition of levies, service of warrants and issuance of summonses. Reliance on moral suasion as a strategy for compliance is not only challenged by officials within the bureaucracy and by donors, but also by taxpaying citizens. In the words of one academic at the University of the West Indies:

‘Government seems to have stopped short of a ‘crusade’ for tax compliance in favour of a ‘campaign’ for tax collection, relying on the traditional philosophy of facilitation instead of criminalisation...Spending budgets are tough and tight but revenue strategies are soft and loose. Yet the revenue department only plans more educational campaigns for these artful tax dodgers. Soft governance has its place. We need to be compassionate and forgiving. We need to inform and educate the ignorant and to make processes easier. But we cannot have open-ended permissiveness, which people will exploit. The situation has prevailed because governance in Jamaica has followed a tradition of talking tough and walking softly’.

More recently however, the IRD has showed a greater willingness to take action against delinquents through, for example, the use of the courts to enforce tax arrears and other delinquencies, after having exhausted other recovery methods.

This situation is in stark contrast to the *modus operandi* of the Customs Department with regard to the use of its legal powers. Customs officials speak of ready imposition of fines and penalties to collect duties and taxes. Despite the penalty structure still containing inadequate and fixed amount penalties, valuation and enforcement officials confess to their haste to apply to virtually every offence

attempted or committed by the importer, Sections 209-211 of the Customs Act which provide strong value-based penalties. Notwithstanding the constraints imposed by the WTO ACV, the department has developed its own coping strategies for dealing with import valuation problems. Such strategies involve drawing on counterpart foreign administrations and exporters as appropriate for the provision of relevant information and, in extreme cases flouting the WTO rules by retaining goods until the appropriate revenues, as determined by the Customs, have been secured.

#### **8.2.2.2 The Administrative Framework**

The Inland Revenue and Customs departments in Jamaica operate within a highly centralised administrative framework. Central institutional arrangements, central policies and guidelines which continue to apply in a number of key operational areas impact on the ability of the focal organisations to make full and effective use of their limited powers of administrative discretion.

Major constraints stem from central controls over funding and the expenditure of funds. Already highlighted in Chapter 6 is the involvement of the various central institutions such as the Ministry of Finance, the Offices of the Accountant General and the Auditor General, the Treasury and the Bank of Jamaica in the expenditure process. Regarding income, both departments highlighted the lack of funds voted by Parliament and provided by the Finance Ministry, and the resulting pressures to prioritise, at times having to forego some projects and programmes until the start of the following financial year. Customs, in particular, highlighted the drastic



cuts in its capital budget during the FY 2008/09. Approved funding, which represented a mere 0.5% of the original submission, resulted in the suspension of critical programmes, and an impeding of the department's modernisation process.

Central financial controls not only impact on the bureaucracy's exercise of policy autonomy, but also its use of administrative discretion in the area of human resources development. Despite the initial small budgets allocated to the focal organisations to conduct local in-house technical training, cutbacks in Object 25 (training) both prior to the start of the FY during the Finance Ministry's process of (re)prioritisation, as well as during the FY, have conditioned efforts at continuous professional development through ongoing training and retraining of staff. Comparing the two organisations, senior officials in the Finance Ministry and the Executive Secretariat of the Director General highlight the Customs Department's adeptness in the exercise of human agency or free will in this area, its ability to free itself from situational constraints through collaborations with regional umbrella bodies, bilateral and multilateral agencies to gain technical and financial assistance to develop capacity through training. The result of proactive behaviours has been a level of capacitation within Customs which is not mirrored in the Inland Revenue department.

With regard to the management of human resources, controls over areas such as post establishment, post classification, and pay & remuneration still emanate from central institutions responsible for these functions. The Civil Establishment Act (General) Order (1995), under the auspice of the Establishment Division of the Ministry of Finance, ensures that employment and assignment are confined to

established positions. The Act provides a breakdown of the position title, the classification, and the number of posts for each title which have been allocated within each division or section of a ministry or department. The focal organisations, despite their human resource autonomy, have no authority to exceed or alter these staffing allocations. The Customs Department, for example, in its efforts at implementing strategies for enhanced trade facilitation, was unable to alter the composition and skill mix by shifting officers from front end entry processing positions to back end risk management and auditing positions. Notwithstanding such constraints, chapter 6 spoke of the department's informal use of autonomy to exceed establishment levels and fill position by borrowing vacant positions from other areas.

Problems presented by the centralised grading system and pay arrangements were highlighted as far back as 1996 during the startup phase of TaxARP. Table 8.1 shows the results of a labour market survey conducted by Project Consultants to compare mainstream jobs in the revenue departments with comparable jobs in the private sector, data which helped to form an assessment of the exact nature and scale of the problem.

# INLAND REVENUE DEPARTMENT

POSITION TITLE	EXISTING SALARY RANGE JA\$		MID	MARKET POSITION	MARKET	MA/MP
	MIN	MAX	POINT(MP) JA\$		AVERAGE JA\$	%
Chief Internal Auditor	366,000	435,059	400,530	Chief Internal Auditor	1,048,317	262%
Manager, Field Enforcement	199,096	263,663	231,380	Operations Manager	896,334	387%
Collector of Taxes	395,400	470,006	432,703	Administrative Manager	653,846	151%
Senior Revenue Officer	124,114	137,028	130,571	Cost Accountant	571,575	438%
Revenue Officer	111,210	120,354	115,782	Treasury Officer	458,724	396%
Internal Auditor	250,000	297,171	273,586	Internal Auditor	443,995	162%
Manager, Office Enforcement	248,207	295,033	271,620	Quality Assurance Officer	430,976	159%
Senior Compliance Officer	171,988	204,439	188,214	Senior Accounts Clerk/Accounting Supervisor	400,000	213%
Cashier	111,210	120,354	115,782	Cashier	214,000	185%

Table 8.1: Market Salaries Comparison for Mainstream Positions in the IRD (1998)

Source: Barents Report III: pp. 3-11 & 3-12

The table shows the public sector minimum and maximum salary ranges, the mid-point salary level for each job; the “most comparable job” in the private sector<sup>56</sup>; the salary average for the particular job; and the percentage by which the Market Average (MA) exceeds the Mid-Point average (MP)<sup>57</sup>. At the journeyman level<sup>58</sup>, salaries in the private sector exceeded comparable jobs in the public sector by between 162% and near 400%. Cashiers in the private sector were capable of earning nearly 200% in excess of their counterparts in government. For first-level manager positions, public sector salaries were exceeded by amounts ranging from 151% to 438%. Consultants noted the inability of the Revenue to recruit

<sup>56</sup> The Consultants noted that “market comparators” for each job were not exact “matches” because of the non-existence of comparable jobs in the private sector. Maximum effort was made, however, to find positions in the private sector with comparable qualifications, experience and scope of duties.

<sup>57</sup> For example, MA/MP% for Chief Internal Auditor is 262%.

<sup>58</sup> Consultants classified a journeyman position as one whereby the post holder works independently having fully undergone their period of training. Posts such as cashiers, internal auditors and revenue officers were classified up to the level of journeyman.

qualified candidates because of the lower-than-market salary scales in the Civil Service as a problem meriting serious consideration.

TaxARP recommended addressing such shortcomings through the adoption of a unique Tax Administration (TA) Grading System. The salary scale for the revenue services would range from TA-1 (lower entry level positions) up to TA-17 (Revenue Commissioner), accompanied by salary increases that would bring pay levels to at least 80% of that for comparable jobs within the private sector. Tables 8.2 and 8.3 show the recommendations for selected tax and customs positions.

<b>Job (Post) Classification</b>	<b>Status of Incumbent</b>	<b>Recommended Grade</b>	<b>Actual Grade</b>
Clerical Clerical Clerical	Entry-level, Trainee Still in training Journeyman	TA-1 TA-2 TA-3	TA-1
Cashier Cashier	Entry-level, Trainee Journeyman (works independently)	TA-3 TA-4	TA-1
Compliance Officer Compliance Officer Compliance Officer Compliance Officer	Entry-level, Trainee Still in training Journeyman Best & most experienced	TA-4 TA-5 TA-6 TA-7	TA-2
Manager, Office Enforcement Manager, Taxpayer Service	First-level manager First-level manager	TA-9	TA-4
Collector (Medium & Small)	First-level manager	TA-12	TA-4
Manager, Field Enforcement	First-level manager	TA-13	TA-4
Deputy Comm., Planning Asst. Comm.(Regional) Collector, Kingston Collector, St. Andrew	Programme/1st-level Manager Second-level manager Third-level manager Third-level manager	TA-14	TA-8 TA-8 TA-5 TA-5
Deputy Comm., Administration Asst. Comm., King/St. Andrew	Second-level manager Fourth-level manager	TA-15	SEG-4 TA-8
Deputy Comm., Operations	Fifth-level manager	TA-16	TA-9
Commissioner	Top Executive	TA-17	TA-10

Table 8.2: Examples of Recommended vs. Actual 'Job Classification and Grading System' for Mainstream and other Jobs in the Inland Revenue Department

<b>Job (Post) Classification</b>	<b>Status of Incumbent</b>	<b>Recommended Grade</b>	<b>Actual Grade</b>
Clerical Clerical Clerical	Entry-level, Trainee Entry-level Trainee Journeyman	TA-1 TA-2 TA-3	TA-1
Customs Officer Customs Officer Customs Officer Customs Officer Customs Officer	Entry-level, Trainee Still in training Still in training Journeyman Best & most experienced	TA-5 TA-7 TA-9 TA-11 TA-12	TA-2 (Customs Officer 1) TA-3 (Customs Officer 2) TA-4 (Snr. Customs Officer) (Snr. Enforcement Off.) TA-5 (Customs Supervisor) (Enforcement Supervisor)
Dep. Commissioner	Heaviest responsibility	TA-16	TA-9
Commissioner	Top Executive	TA-17	TA-10

Table 8.3: Examples of Recommended vs. Actual ‘Job Classification and Grading System’ for Jobs in the Customs Department

As shown in the tables, entry level grades for some jobs were pitched at TA-4 or TA-5 levels in order to attract the best qualified candidates. Serious deviations, however, in both field and managerial positions resulted in salaries failing to match up to the anticipated 80% mark.

Six years on, after the 2002 delegation of human resource functions, revenue departments were still unable to fully exercise their autonomy to recruit the best talent in a number of critical areas due to their inability to adjust centrally set pay levels. One backlash from pay centralisation has been a relaxing of standards and criteria set out in position descriptions relating to qualifications, skills and experience, so as to fill vacant posts. Officials also spoke of the impact at the bottom line, in terms of overall manpower levels and the reduced capacity of the organisation to effectively perform and meet targets in affected functional areas.

Central administrative policies, procedures, rules and guidelines not only condition the departments’ exercise of policy autonomy and human resources

management autonomy, they also impact on freedoms in the areas of financial management, particularly with respect to the procurement of goods and services.

Prior to 1999, revenue departments, similar to other government entities, exercised sole authority over procurement up to a set threshold limit of J\$0.25m. The fact that a vast number of contracts easily exceeded this ceiling resulted, after numerous complaints, in a revision to central policies. Table 8.4 details the administrative procedures which need to be followed, and the institutions which must be involved as appropriate in the contracting process, depending on the levels of expenditure.

Dollar Amount		Action	Approved Authority
Less than J\$4.0m	Estimated contract value is less than JA\$250,000	No advertising required. Opportunities should be offered through limited tender, where procuring entities must invite at least three (3) or more appropriately qualified contractors registered with the National Contracts Commission (NCC) to participate.	Agency/Ministry shall approve contracts subject to set procedures.
	Estimated contract value is equal to or more than JA \$250,000 but less than JA \$1m.	Opportunities should be offered through limited tender, where a minimum of five(5) tenders should be invited from appropriately qualified contractors registered with the NCC.	
	Estimated contract value is equal to or greater than JA\$1m but less than JA\$4m.	Participation opportunities should be offered through selective tender and be open to all appropriately qualified suppliers registered with the NCC. Unless the nature and/or complexity of the procurement require national advertising, procuring entities shall advertise opportunities in specified local locations.	
>J\$4m and <J\$15m	Estimated contract value is equal to or greater than JA\$4m but less than JA\$15m.	Opportunities should be offered through selective tender by national advertising, where all interested appropriately qualified contractors who are registered with the NCC are offered the opportunity to tender.	Minister shall approve contracts on the recommendation of the NCC – I.e. the NCC must review ex ante all requests for procurement of goods and services
J\$15.0m and above	Estimated contract value is equal to or greater than JA\$15m but less than the international contract value threshold.	Services shall be procured on the basis of selective tender, where all qualified contractors who are registered with the NCC are afforded the opportunity to tender. A contractor prequalification is required.	Cabinet approval necessary on the recommendation of the national Contracts Commission and the Minister

	Estimated contract value is equal to or greater than the international contract value threshold	Opportunities shall be offered through open tender with prequalification.	
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Table 8.4: Government Policy & Guidelines for the Procurement of Goods and Services

All procedures above J\$4.0m must be referred to the National Contracts Commission (NCC) or specially established sector committees for review. Contracts over J\$15.0m are subject to the final approval of Cabinet, and in cases where the project is funded by an external donor agency, the approval of the agency may be required. When submitting to the NCC their recommendations for contract awards, the departments are required to complete a very lengthy and detailed 'National Contracts Commission Transmittal Form'. Field officers from the NCC may select specific projects in which they have an interest and request to sit in on tender opening and evaluation for these projects to ensure that established procedures are being followed.

Whilst the departments have certainly been granted more latitude after a moderate relaxation of controls over procurement, the situation seems to have come full circle as a result of recently issued guidelines. As of May 2006, all government departments are required to submit ex post monthly statements and a 'Quarterly Contract Awards' Report of all contracts awarded from JA\$250,000 up to JA\$3.99m. One local newspaper reporting on the CG's demands for mass reporting and the objections being raised by government entities wrote:

"The present Contractor General has faced criticism and rebuff for insisting that he wants to review all contracts to be awarded by public-sector bodies in a quest to curb abuse of the tendering and awards process...The Contractor General indicates that there is no magical

disappearance of abuse of the contracting process at the level of JAS3.99 and below.” (Daily Observer, June 2 2006:8)

Centralised procurement rules not only impact on bureaucratic exercise of financial management autonomy, they also, according to revenue officials, place enormous constraints on manpower utilisation. One senior accounting officer in the IRD notes that the new directives re. the submission of monthly statements to the NCC is a very time-consuming process. The department is now forced to employ two officers to work specifically on procurements relating to facilities; one individual for general goods and one specifically for services. Whilst procurement of goods can take between two and a half to three months, the tendering process for services can sometimes take up to five months. Sometimes in the achievement of key results and the timeframe for deliverables, specified timeframes for the completion of projects are completely thrown off-mark.

### **8.2.3 LEGAL TRADITION**

Jamaica’s legal system and laws are based on the common law tradition. Sources of law included case law and statute, the last three decades witnessing a marked rise in subsidiary legislation. The following section focuses on the common law tradition as it operates in Jamaica. Recall that one of the aims of the study is to compare the Jamaican common law tradition and the civilian tradition within the Dominican Republic, with a view to understanding the extent to which particular aspects of legal tradition, namely, drafting style and statutory interpretation, impact on bureaucratic functioning and the exercise of bureaucratic autonomy.



### 8.2.3.1 Legislative Drafting Style

The common law tradition is usually characterised by a style of drafting of legislation which is “fussy” – very detailed and specific in nature. Several interviewed legal professionals attested to the detailed manner in which Jamaican laws have traditionally been drafted across a majority of policy areas. Noted, however, is the contemporary more progressive construction of statutes and general attempts to move away from the use of minor details in drafting legislation. With regard to the fiscal policy area and taxing statutes, there is a tendency in Jamaica towards the adoption of legislation of countries such as the United Kingdom, Australia, and New Zealand, the result being a style of drafting which was very detailed in the past, and which continues up to present day.

Such style of drafting is typical of a number of revenue laws, including the Income Tax Act 59 of 1954, the Customs Act, Cap 89 (1941), and the Revenue Administration (Amendment) Act (1994). Figures 8.2-8.5 are the results of content analyses and selected contents of provisions within these three pieces of legislation. Figure 8.2 is an analysis of how the Income Tax Act deals with the issue of the ascertainment of chargeable or statutory income, the basis upon which a large amount of domestic tax is collected.

<i>Ascertainment of Chargeable Income</i>	
<i>Article 13 – Deductions Allowed</i>	
No. of Sections:	8
No. of Pages spanned:	10
No. of Lines:	307
No. of Words:	2,365
No. of specific cases identified as qualifying under the Article:	
22	

Figure 8.2: Content Analysis of Article 13 of the Jamaica Income Tax Act (1954)

Article 13 is very detailed; eight sections spanning 10 pages that comprise 307 lines totalling approximately 2,365 words. It states that for the purpose of ascertaining chargeable income, there should be deducted all disbursement and expenses incurred in acquiring the income. The article identifies 22 specific cases qualifying for such treatment, a number of these cases incorporating certain provisos that must also be met. Also outlined in detail are deductions precluded from consideration under the law. Qualifying under the law are expenses incurred in the provision of business entertainment. The said article in section 8, uses 10 lines and 124 words to define what is meant by 'business entertainment' as illustrated in figure 8.3.

(8) For the purpose of paragraph r of subsection (1) and subsection (7) –

(a) "business entertainment" means entertainment (including hospitality of any kind) provided by a person, or by a member of his staff, in connection with a trade, business, profession, employment, or vocation carried on by that person, but does not include anything provided by him for members of his staff unless its provision for them is incidental to its provision also for others.

(b) any reference to expenses incurred in providing business entertainment includes a reference to expenses incurred in providing anything incidental thereto, and any reference to the members of a person's staff includes reference to persons employed by that person, and, in the case of a company, directors of the company, or persons engaged in the management thereof whether or not employees of the company.

Figure 8.3: Article 13 s.(8), Income Tax Act (1954)

The same degree of precision and clarity is also visible in the style of drafting used in the Customs Act, Cap 89 (1941), which uses very archaic language, complicated terminology, and long sentences full of subordinate clauses. A typical example, illustrated in Figure 8.4, is Article 210, s.(1) which deals with the penalty for evading customs laws relating to imported and exported goods.

**210 (1) - Penalty for evading customs laws regarding imported or exported goods**

210.-(1) Every person who shall import or bring, or be concerned in importing or bringing into the Island any prohibited goods, or any goods the importation of which is restricted, contrary to such prohibition or restriction, whether the same be unloaded or not, or shall unload, or assist or be otherwise concerned in unloading any goods which are prohibited, or any goods which are restricted and imported contrary to such restriction, or shall knowingly harbour, keep or conceal, or knowingly permit or suffer, or cause or procure to be harboured, kept or concealed, any prohibited, restricted or uncustomed goods, or shall knowingly acquire possession of or be in any way knowingly concerned in carrying, removing, depositing, concealing, or in any manner dealing with any goods with intent to defraud Her Majesty of any duties due thereon, or to evade any prohibition or restriction of or applicable to such goods, or shall be in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any import or export duties of customs, or of the laws and restrictions of the customs relating to the importation, unloading, warehousing, delivery, removal, loading and exportation of goods, shall for each such offence incur a penalty of not less than treble the import duties payable on the goods nor more than treble the value of the goods; and all goods in respect of which any such offence shall be committed shall be forfeited.

Figure 8.4: Article 210 s.(1), Customs Act Cap 89 (1941)

In the Act, the article expends 24 lines and 239 words to specify details that answer a number of questions which might arise where there is ambiguity. Not only are details provided on the nature of the goods involved, also specified is the status of clearance and the involvement of the importer/exporter. The law applies to all manner of prohibited, restricted, or uncustomed goods, duly or unduly cleared, regardless of whether the perpetrator was directly or indirectly involved in their harbouring, concealment or removal. By repeating the word 'knowingly' five times in the Article, arguably legislators want to make clear to tax administrators that the individual must be consciously aware of the circumstances surrounding the importation/exportation and of his/her willful intent at tax evasion. Such detailed specification therefore places the burden of proof on the bureaucracy to produce evidence of such knowledge and behaviours.

Continuity of the traditional detailed and precise style of drafting used in the older taxing legislation is still very much evident in the style used for drafting newer tax laws. One newer piece of legislation is the Revenue Administration (Amendment)

Act (RAA) (1994), which, in Part VIC, incorporates nine articles aimed at strengthening the enforcement powers of the revenue agencies. To illustrate such continuity in drafting style, Article 17G, dealing with production and inspection orders, is shown in Figure 8.5. The provisions specify the purposes for which the information being requested must be needed; the 'persons' subject to the provision; the specific format for an application of a court order; the undertaking on the part of the bureaucracy which must be satisfied prior to the court's issuance of the order; the details to be specified in the order; as well as the legal obligations of the persons served with the order. The question of the precedence of this provision in the RAA over any other potentially conflicting pieces of legislation is not left unanswered, as legislators indicate the supremacy of this provision over obligations elsewhere to maintain secrecy or restrict information disclosure. The law therefore permits little elbow room for bureaucrats to exercise discretion, by for example filling in details in subsidiary legislation.

Questioning the rationale behind the precision in the revenue laws, interviewees cited two main reasons for such specificity by Jamaican legislators. One reason involves efforts at safeguarding individual rights; efforts which they argue often constrain agency discretion. Over-prescription has resulted in the Revenue having to follow specific procedures, to make specific findings, and to take action within specified periods of time.

## REVENUE ADMINISTRATION ACT

### 17G. Production and inspection orders

17G. (1) Where a Commissioner has reasonable grounds for suspecting that a person mentioned in subsection (3) has possession or control of any information, document or record which is relevant to the duties of the Commissioner in relation to-

- (a) making an assessment in relation to a taxpayer under any relevant law;
- (b) making an investigation into any case involving tax evasion or for the prevention of fraud on the revenue;
- (c) determining the tax liability of a tax-payer under a relevant law; or
- (d) collecting any outstanding amount owed by a taxpayer on account of tax, penalty, interest or fine under any relevant law,

the Commissioner may apply to a Judge in Chambers in accordance with subsection (2) for an order under subsection (4) in relation to the person suspected of having possession or control of the information, document or record.

(2) An application under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit.

(3) The person referred to in subsection (1) is -

- (a) a bank licensed under the Banking Act;
- (b) a financial institution licensed under the Financial Institutions Act;
- (c) a person registered under the Public Accountancy Act;
- (d) a building society registered under the Building Societies Act;
- (e) a society registered under the Co-operative Societies Act or the Industrial and Provident Societies Act, as the case may be;
- (f) a person who is or has been, a party to any business transaction with the taxpayer in question.

(4) Where an application is made for an order in relation to any person, the Judge in Chambers, if satisfied that the Commissioner concerned has requested the information, document or record from the taxpayer without success and that in all the circumstances of the case, there are reasonable grounds for making the order, may make an order requiring the person to-

- (a) produce to the Commissioner or an authorized person named in the order, any information, document or record of the kind referred to in subsection (1) that is in the person's possession or control; or
- (b) make any such document or record available to the Commissioner or that authorized person, as the case may be, for inspection.

(5) A person referred to in subsection (3)(c) shall only be required to furnish information, documents or records which form part of a taxpayer's accounting records.

(6) An order under subsection (4) shall specify the time when and the place where the information, document or record shall be produced or made available, as the case may require.

(7) Any obligation to maintain secrecy or any restriction on the disclosure of information or the production of any document or record imposed on any person by or under any of the Acts referred to in subsection (3) shall not apply to the disclosure of information or the production of any document or record pursuant to a requirement under this section.

Figure 8.5: Article 17G, Revenue Administration (Amendment) Act (1994)

Also having significant bearing on drafting style are certain societal factors. Jamaica is characterised in the various local media as a generally non-compliant society when it comes to paying taxes. According to one academic, the inability of citizens to see value for their tax dollars (poor quality schooling, infrastructure, limited social benefits) has gotten the majority of persons into a pattern or mould of attempts to avoid or evade payment of duties and taxes. Hence, the need for legislation which is detailed and specific to help address this propensity towards non-compliance.

Despite continuing detail in the content of taxing statutes, worth noting, however, are changes in other aspects of the style of drafting. Comparing figures 8.4 and 8.5, visible are the marked differences along the lines of sentence length/structure, the arrangement of information, paragraphing, and the degree of complexity of the vocabulary. According to the Commissioner, Tax Administration Services Department, the legal arm of the tax administration: “what we are currently witnessing is an attempt to drag the Jamaican common law drafting style into the 21<sup>st</sup> century, for example by breaking information up in such a way to make it ‘more digestible’, and through avoidance of the use of subordinate upon subordinate clauses”.

#### **8.2.3.2 Statutory Interpretation**

In Jamaica, use of the strict literal approach to interpreting legislation has been the general rule of thumb. This was also typical of the manner of interpretation of taxing legislation, as evidenced by cases such as *Collector of Taxes v. Winston*

*Lincoln* (1988) and *R v. Wilson* (1994). Over the years, however, cases such as *Carreras Group Ltd v. Stamp Commissioner* (2003), *Cigarette Company of Jamaica Ltd. v. The Commissioner of Taxpayer Audit and Assessment* (2005), and *Commissioner of Taxpayer Appeals v. Swept Away Resorts Ltd.* (2006) have resulted in judgments that illustrate a movement away from strict interpretation. To illustrate these points, a few cases are explained in some detail.

In the case of *Collector of Taxes v. Winston Lincoln* (1988), the matter before the court involved judicial interpretation of Article 72(1) of the Income Tax Act, which outlines the powers of the Commissioner to make assessments for income tax. Article.72(1) states:

“the Commissioner shall proceed to assess every person liable to the payment of tax as soon as may be after the expiration allowed to such person for the delivery of his return”.

In 1985, Mr. Lincoln appealed to the Court of Appeal against a ruling to pay J\$3m. in income taxes after failing to file returns for the six-year period 1978-1983. The taxpayer argued that the Commissioner acted *ultra vires*, since the ITA grants no powers to make ex-parte assessments, i.e., assessments made without first considering a return submitted by the taxpayer or first requiring the taxpayer to submit a return.

In order to determine the validity of the assessment, the court needed to deal with the ambiguity in Article 72(1) which left unanswered the procedures to be followed by the Revenue prior to the making of an assessment. To do so, it needed to conclude whether the process of assessment could only commence with the

issuance of a notice by the Commissioner to the taxpayer to fill a return, as mandated under Article 70 of the Act.

In interpreting the provision, the court contended that the Article ought not to be construed to include the two situations where the Commissioner has served a notice and also where no such notice has been served. This, the court argued, would be two concurrent jurisdictions – one providing reasonable protection for the taxpayer, and the other providing no protection against assessments, apart from the right of appeal. Referring to case law, the court stated that any ambiguity in Article 72(1) as to the meaning of the time allowed for the delivery of a return must be resolved in favour of the taxpayer, and that as a consequence, assessments should be confined to cases where the Commissioner has served a notice, as required under Article 70 of the Act. Certain actions, namely the request to render a return, and the requirement to wait for the time allowed in the request to elapse, are both conditions precedent to the making of an assessment. These are the procedures, the Justices agreed, that must be followed in order to contend that an assessment is final and conclusive.

Rationalising the purpose behind these conditions, the court argued the intention here as being “to provide reasonable protection for the taxpayer before an assessment is made, by affording him an opportunity of stating his income and other relevant matters”. Highlighting the canon of construction, which stipulates that, if the mandatory provisions of a statute are not followed, then the results which flow therefrom are void, the court ruled that in the absence of the two vital



preconditions, the assessment was made without jurisdiction, and was therefore null and void.

In *R v. Wilson* (1994), the issue under dispute involved the interpretation of Article 210 (1) of the Customs Act, Cap 89, under which the appellant Roy George Wilson was charged in the Revenue Court for using his employer's duty free facility to import goods for other importers for a fee. Article 210 (1) states:

‘Every person who [is]...knowingly concerned in any fraudulent evasion or attempt at evasion of any import or export duties of customs...shall for each such offense incur a penalty of \$5,000, or treble the value of the goods at the election of the Commissioner; and all goods in respect of which any such offense shall be committed shall be forfeited’.

Mr. Wilson was fined under Article 210 (1), but absent from his penalty was any order for the forfeiture of the goods, given his lack of possession of and inability to produce the same. In the exercise of his powers the Commissioner, under Article 219 of the Act, had granted immunity from prosecution to Mr. Wilson's accomplices, allowing them to retain the goods and to pay all duties and taxes. The appellant's contention was that by proceeding under Article 219 to collect the duties on the goods, the Commissioner disabled himself from making an election under Article 210 (1) to impose a penalty, which also includes a mandatory forfeiture of the goods.

In interpreting the provisions of the statute, Justice Wright in his summation argued the crucial issue; namely, if there are no goods against which an order of forfeiture can be made, whether it is competent for a penalty to be imposed.

Overtaking the ruling of the Resident Magistrate's court, the Revenue court argued:

"It is difficult to see how this could be so...[I]n a situation where the goods are not amenable to the order of forfeiture, *the court in imposing only the Commissioner's election would be imposing a penalty not provided by law*" (own emphasis).

According to the court's reasoning, the non-availability of a sentence under Article 210 (1), because of the action taken by the Commissioner under Article 219, meant that proper sentences had not been imposed on the appellant, and accordingly, they had to be quashed.

Legal professionals and tax officials interviewed by the researcher proffered a number of related reasons for the literal interpretation of taxing legislation. Revenue laws, they argued, include some of the most intrusive powers of the State, given the primary objective of government to collect revenue and to safeguard society. Just like penal provisions, the provisions within fiscal statutes often result in the forced extraction of money, with punitive elements for non-compliance. This being the case, government has an obligation to say what it means or what it intends in clear and unequivocal terms. Once the law is clear, this reduces the discretionary powers of tax officials and the judiciary to decide whether or not an individual should be forced to be brought within the scope of the law.

Such strict line of reasoning has, in more recent times however, given way to changes in the way taxing statutes are interpreted. One example is the case of *Carreras Group Ltd v. Stamp Commissioner* (2004). Here the matter involved

interpretation of specific provisions within the Transfer Tax Act (1971) of Jamaica, which imposes a tax on the transfer of certain property, including shares in companies. Para. 4 (2) of the First Schedule of the Act provides, however, that “a reorganisation or reduction of a company’s share capital shall not be treated as involving any disposal of the original shares”, and para. 6 (1) adds “where a company issues shares or debentures to a person in exchange for shares in or debentures of another company, para. 4 shall apply with any necessary adaptations as if the two companies were the same company and the exchange was a reorganisation of the share capital”.

The taxpayer submitted to the revenue authority documents purporting to be an exchange of shares for debentures, but was assessed by the Stamp Commissioner for transfer tax, on the basis that the transaction was a sale and not a reorganisation. Carreras objected and initiated a suit which started in the Revenue Court and ended in the Privy Council. In the Revenue Court, Justice Anderson relied on the decision of the House of Lords in *IRC v. Duke of Westminster* as authority for saying that a taxpayer is liable to tax on the clear words of a statute and not on the perceived intention of the legislature. He noted Lord Tomlin’s dismissal in this case of the “supposed doctrine” which would allow the Revenue to ignore the strict legal position and consider the “substance of the matter”. Based on a strict interpretation of the law, the court held that in these circumstances the exchange of shares for a debenture was not a “sham” but a reorganisation falling “within the four corners” of para. 6 (1) of the First Schedule of the Act, and therefore exempt from transfer tax.

The Stamp Commissioner's appeal was allowed by the Court of Appeal and Carreras' appeal from that decision was dismissed by the Judicial Committee of the Privy Council. In addition to examining the statutory provisions, a number of cases were considered, salient among these the landmark English case of *Ramsey (W.T) Ltd. v. IRC*.

Both appellate bodies held that the "Ramsey principle"<sup>59</sup>, the standard bearer of the modern approach to the interpretation of tax law, would apply to this transaction. Lord Hoffman, who delivered the opinion of the Board, noted that since Ramsay, the courts have taken the view that the revenue authorities and the court had a duty to examine the transaction in its entirety and not with the individual steps into which a transaction may be divided. Also to be considered was the purpose of the legislation which, in this case, was to exempt genuine cases of exchange rather than those which had as the main purpose avoidance of tax. In the view of the Privy Council, if the transaction was confined to what happened on the 27<sup>th</sup>, by virtue of the agreement executed on that day there could be no doubt that it fell within the description in the statute. However, a wider view of the terms of the debenture and its redemption two weeks later led to the conclusion that it was one transaction, a formal step having no commercial purpose. The Justices agreed that it was plain from the terms of the debenture and the timetable, the redemption was not merely contemplated, "but intended by

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<sup>59</sup> At pg. 323 of his judgement in this case, Lord Wilberforce reiterated the principle of *IRC v. Duke of Westminster*, but cautioned against it being overstated or over-extended. "...[I]t does not compel the court to look at a document or a transaction in blinkers, isolated from any context to which it properly belongs...It is the task of the court to ascertain the legal nature of the transactions to which it is sought to attach a tax or a tax consequence and if that emerges from a series or combination of transactions...it is that series or combination which may be regarded". The new approach therefore entitled the court to ignore the intermediate steps and look at the end result.

the parties as an integral part of the transaction, separated from the exchange by as short a time as was thought to be decent in the circumstances”. The court therefore concluded that the exchange and redemption of the debentures were a single transaction, a sale which attracts transfer tax.

This, according to a number of legal professionals interviewed, has now become the approach used by the courts in interpreting tax law in Jamaica, an approach again used in favour of the Revenue in the more recent cases of *Cigarette Company of Jamaica Ltd. v. The Commissioner of Taxpayer Audit and Assessment* (2005), the largest tax case in the Jamaican courts; and *The Commissioner of Taxpayer Appeals v. Swept Away Resorts* (2006). In the case of the latter, the issue which arose for determination by the court was whether interest income earned from a bank account should be regarded as profits or gains arising or accruing from an approved hotel enterprise, and therefore exempt from tax by reason of Article 9 of the Hotel (Incentives) Act or; as income subject to the payment of income tax pursuant to Article 5 of the Income Tax Act.

Swept Away Resorts Ltd. (Swept Away), an approved hotel under the Hotel (Incentives) Act was entitled to relief from income tax for a period of ten years. Between 1995 and 1999, it was the practice of the hotel's management to place surplus cash into an interest-bearing account in a commercial bank, significant interest income generated as a result of this practice. Though initially, tax was paid on the interest earned, in 2001 Swept Away filed amended returns totaling approximately J\$7.5m, purporting to treat the interest income as not being subject to tax, by virtue of Article 9 of the Act. Article 9 states that any company which is

the owner or tenant of premises comprising a hotel to which an order has been made under Article 3 or Article 4 "...shall be entitled to relief from income tax in respect of profits or gains arising or accruing during the relevant concession period, from the approved hotel enterprise...of which it is the owner, tenant, or operator". The Act defines a "hotel enterprise" to mean the business "concerned with" the establishment or operation of a hotel.

Both the Commissioner of Taxpayer Audit and Assessment and, upon administrative review, the Commissioner of Taxpayer Appeals, took the decision that the interest income was taxable under Article 5 of the Income Tax Act. The taxpayer's appeal from this decision to the Revenue Court succeeded for a number of reasons. Arguing the intent of the legislature to provide tax incentives to facilitate investment in the tourist industry, the court queried the inference to be drawn from the Revenue's treatment, that an approved hotel enterprise with surplus cash flow in an account that earns no interest with which to reduce its reliance on debt, should realise a preferred tax position to a company like the appellant, which uses its resources more efficiently. Based upon such reasoning, the court ruled that the source of income of the hotel enterprise does not matter, since the wording of Article 9, which speaks to relief on tax from profit or gains, is intended to encompass the wider concept of aggregate income, i.e. income from all sources. In any event, the interest earned on the deposit account, in any commercial sense, was derived from the approved "hotel enterprise", i.e. as a result of gains/profits from the business "concerned with" the operation of the hotel, since that was the only business carried on by the hotel.

Whilst agreeing it would have been most impudent for the respondent to have kept the surplus profit in its vault at the hotel, the Court of Appeal, in hearing Revenue's appeal from this decision, argued the issue being whether the interest was a profit arising or accruing from the approved hotel enterprise. According to the court, 'a purposive construction has to be applied in construing Article 9 of the Act', with due consideration given to the nature of the transaction which produced the interest income to the taxpayer. Interpreting the provision of the statute, and viewing the whole situation realistically, the court agreed with the counsel for the appellant that by inserting the words "from the approved hotel enterprise", the draftsman had qualified the source of profits and gains which were to be relieved from the payment of income tax. Justice Harrison, on delivering the judgement, argued that the word "from" ...makes it clear (1) that the source of the profit and gains to be relieved must be the business concerned with operating the hotel<sup>[60]</sup>; and (2) that the intention of Parliament was not to relieve all the profits and gains of the business from income tax". The interest income earned was best described as profit and gains "of" the business, earned solely by virtue of a banker and customer relationship which the respondent had with its bank. In light of such purposive interpretation, it was held that the interest earned on the investment income was subject to the payment of income tax under Article 5 of the Income Tax Act.

The judgements in these latter cases are seminal both to administration of taxes, as well as to the approach in interpreting local Jamaican taxing statutes. From a

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<sup>60</sup> The inherent character and activity of the business concerned with the operation of a hotel was identified as the provision of services such as accommodation, meals and entertainment for reward.

tax administration perspective, the inference is that the Revenue, as part of its fact-finding mandate, should be emboldened in assessing any tax avoidance schemes. From a legal standpoint, it is evident that the courts are now more willing to adjudicate on matters involving the interpretation of provisions of taxing statutes. Not only is case law being applied as part of the practice of judicial precedence to help provide answers, for example, to the mischief which a statute was designed to fix, recourse is also being had to a number of extraneous sources. The courts also allow submissions on how the law came to be enacted through Cabinet submissions, evidence of experts involved in the development of the law, and on notes accompanying the legislation at the side of provisions.

Rationalising the shift from the strict literal taxpayer-favoured approach, one judge of the Revenue Court argued:

“Not everything can be legislated for, and Jamaican taxpayers have become more creative in finding ways to avoid taxes. The purposive approach makes it more difficult for tax avoidance schemes to succeed since judges are no longer constrained by the words of tax provisions and are able to look behind at the underlying purpose.”

Note however, it would be incorrect to speak of a wholesale departure from the strict literal approach. Some members of the judiciary interviewed acknowledged that there might be cases where the facts do not warrant conclusions similar to those reached in the high court in the latter cases discussed, and that such precedents are being used advisedly. Justices spoke of efforts at overall general improvements in local jurisprudence. The aim of the court today, they argued, is not to bend over backwards to favour any particular party, but to strike a balance



between equity for the taxpayer through protection of individual rights, while protecting the public purse to ensure government's ability to fulfil its fiduciary and other responsibilities.

## **8.2.4 SYSTEM OF GOVERNMENT**

### **8.2.4.1 The Executive**

Both the IRD and CD share the view that generally, there is a lot of support from the Executive for policies and programmes conceptualised to implement government policy. There is a history throughout the Tax Administration of good relations between the Finance Minister and his senior management team in the revenue departments. The head of the IRD spoke of strategic planning retreats organised for the entire Tax Administration, some of which are attended by the Finance Minister. At these sessions, the opportunity is used to debate a number of issues, and as a result, to gauge from the Minister, even before issues reach the point of Cabinet submission, the mood of Cabinet with regard to certain issues.

The Minister of Finance, during one of his interviews also commented on his style of managing the revenue departments:

'In several aspects of the running of the revenue departments, I had no personal information and did not involve myself in the operational decision making. For 14 years, I never got involved in individual tax return matters. For example, in the definition of charitable organisations – entities which pay no taxes and donations are tax deductible - the law gives the Commissioner the power to designate an entity as a charitable organisation. In the case of requests for intervention in matters involving acquiring the status as a

charitable organisation, I refer persons to the Commissioner of the Inland Revenue Department'.

The Finance Minister also spoke about making concerted efforts to bring the heads of the revenue departments into discussions with the Ministry on the macro economy and macro-economic issues, so that they could better understand the environment in which they are working. Not only did he believe that the organisations should be provided with some room to manoeuvre, the departments, he argued, were too big to start having a detailed interest in all of their operations.

Heads of both departments spoke of the Executive and the degree of politicisation of the bureaucracy in terms of staffing as well as involvement in operational functioning. With regard to staffing, officials are fairly well protected by the various public service laws and policy guidelines which speak to selection and promotion. These include Public Service Regulations, Circulars No. 23 and No. 15 of the Office of Services Commission (OSC) dated July 3, 1975 and August 12, 1983 respectively, as well as the 'Human Resource Policy for the Public Service of Jamaica' approved by the Cabinet Office in 1986. Each of these documents emphasise key public sector norms and standards such as the criteria of recruitment via competition, selection based on merit (relative abilities, knowledge and skills). The HR Manager for the Tax Administration confirmed that even though there may be some pressure from Cabinet members and other politicians when filling contract positions, generally, senior positions are widely advertised in the press and elsewhere and free from politicisation.

Where politics comes into play within the organisations is on matters relating to revenue collections and financial management. When questioned on this issue, the Finance Minister confessed:

‘My primary focus is deviation from targets. The revenue departments produce measurable outputs as opposed to some of the other departments where outcomes are more qualitative and difficult to measure. Coming from a finance and quantitative background it is understandable that for me efficiency is judged from a quantitative perspective with a lesser focus on the quality aspect of the work. So yes, I would say that the revenue departments are more closely monitored from this perspective. Very few departments are subjected to the same degree of monitoring. Outturn against targets is a real factor, as it bears on the policy area and the implications for wider development.’

In other areas, informal controls are asserted which impact on the already limited financial management autonomy of the IRD. On occasions, communications are received with a directive from the Finance Minister about set ceilings for the repayment of monies within a given period, or to withhold all payment of tax refunds until further advised.

#### **8.2.4.2 The Judiciary**

Chapter 1 provided background information on the structure of the judicial arm of the Jamaican government. Resident Magistrate’s (RM) courts adjudicate on pure collection matters once it is clear there is a legally owed debt outstanding. Here, the judge’s role is merely to enforce collection. Once a question of fact has been established the judge has a number of options; including ordering the collecting of the full amount outstanding, varying the interests and penalties where it is felt that the amount levied was exorbitant or, sending the matter back to the revenue

department for reconsideration. In cases where objections raised either by the taxpayer or the revenue involve an interpretation of technical aspects of tax policy or revenue laws, such matters are heard in the Revenue Court which has the full status of a Supreme Court. Appeals move from the Revenue Court to the Court of Appeal. Outside of the formal court system, other entities exercise quasi-judicial functions. Under section 219 of the Customs Act, the Commissioner has the authority to mitigate rather than to go to court. Such powers are also vested in the Commissioner of Inland Revenue. Appeals against administrative decisions of both departments may also be made to the Taxpayer Appeals Department.

From the perspective of compliance officers interviewed in the Inland Revenue Department, autonomy is under constant threat from the judiciary. A number of tax cases advance through to the court system and senior tax officials point to the lack of support, particularly from Resident Magistrates. In a number of cases heard in the RM courts, decisions are either delayed and collection stayed pending final outcomes; tax liabilities reduced; minimal fines imposed as opposed to custodial sentences; or in extreme cases, statements and utterances made which are very critical of the tax administration. In cases of delayed judgements, decisions are sent back to the revenue for reconsideration, the department traditionally complying with any recommendations or suggestions made by the court. Where there is a range in the application of fines and penalties that can be imposed, judges tend to opt for the lower end. Judgements are sometimes perceived as bordering on the ridiculous – millions of dollars owed in taxes ordered to be repaid at a rate of J\$1,000 per month. In their view, there is at this

level an overall lack of a general understanding of the centrality of tax administration and the role of the judiciary in the function of revenue collection.

Unlike the IRD, historically, very few cases involving the Customs department go to court. Importers have a tendency to admit wrongdoing and throw themselves at the mercy of the Commissioner, rather than appealing to the Taxpayers Appeal Department or the court. This might be to avoid: costs, the risk of losing the case, or facing social ostracism from peers for criminal wrongdoing as a result of the publicising of cases. During the 3-year period 2005-2008, the Commissioner in exercise of his quasi-judicial function mitigated some 1, 884 cases. Reluctance by importers to appeal decisions through the TAD or the courts results in a lack of interference in Customs administrative decision-making, thereby enlarging the interventional and policy autonomy of the department.

Contrary to the outcomes of rulings on administrative decision-making in the RM courts, officials within both departments spoke of the comparatively less threat to their decision-making authority from the judges of the Revenue Court. This institution is seen as being much more open to looking at the issues objectively, which has resulted in the Revenue winning a number of cases. For the period 2005-2008, seven matters proceeded to trial, with the Revenue being successful in six cases. Such success, tax and customs officials attribute to the competence and expertise of the Revenue Court judge, unlike the capacity for adjudicating tax cases within the Resident Magistrate's Court.

According to Sec. 6.(1) of the Revenue Court Act of 1971, the Revenue Court Judge... 'shall be a Puisne Judge of the Supreme Court nominated by the

Governor-General acting on the advice of the Judicial Service Commission, being a person appearing to that Commission to be versed in the law relating to income tax'. Over the years, the Judges recruited have all met with the criteria as specified by the law, either having a postgraduate degree in taxation or having had a number of years experience working in the Income Tax Department along with their formal qualification.

According to the Head of the Customs Department, the Revenue Court is a 'true ally' of the Customs department. Where outcomes have not been in the department's favour was largely because of the poor construction of cases, due to some minor technicality, or because of some loophole in the law that needed to be amended. Adding to this, the Judge of the Revenue Court interviewed noted another main challenge to upholding tax administrative decisions, which rests in the failure of the revenue departments to comply with administrative procedures set out in the revenue statutes.

### **8.3 THE IMPACT OF MESO-LEVEL TASK NETWORK FACTORS**

Earlier, Chapter 3, as part of its discussion on the task network environment of the organisation, introduced the theory of resource dependency and dependency relations. Discussed was the importance of the availability, adequacy, and timeliness of delivery of resources from organisations within the task network or technical environment of the focal organisation; the issue of multiple principals; and what this all spelt for autonomous bureaucratic functioning.

Linked to Figure 8.1, Table 8.5 specifically identifies some of these key institutions with which the departments interface within its immediate task network, highlighting the exact nature of the resource exchange<sup>61</sup>.

Srl. No.		Resource Provider	Nature of Resource Dependency
1.	Non-Executive arm of Government	The Legislature	Tax laws and regulations.
		The Judiciary (Resident Magistrate Court and the Revenue Court)	Disposal of tax cases.
2.	Other Departments of the Tax Administration	Office of the Director General	Strategic advice on tax and customs matters.
		Tax Administration Services Department	Provision of common services e.g legal services, logistics, training, civil works and procurement.
		Taxpayer Appeals Department	Adjudication in the administrative appeals process
3.	Other Government Departments/Agencies	Tax Policy and other Divisions of the Ministry of Finance	Tax policy, policy advice; administrative budget; information and oversight.
		Cabinet Office ( Establishments Division)	Post establishment; setting of pay scales.
		Ministry of the Civil Service	Classification of posts and salary grading.
		Public Services Commission and Office of the Services Commission	HRM matters (recruitment, promotion, transfer and discipline of employees).
		Attorney General's Chambers	Review of legislation; advice on prosecution of cases.
		Auditor General Department	External audit of operations.
		Accountant General and Treasury Departments	Release of appropriations; information.
		Office of the Parliamentary Counsel	Preparation of draft legislation; advice and comments on submissions related to legislation.
		National Land Registry; Land Valuation Department; Corporate Affairs Department	Provision of information relevant to collection of taxes.
		Contractor General Department and National Contracts Commission	Approval of purchases of goods and services.
		Financial Investigations Division	Conduct of special investigations (e.g financial crimes).
4.	Private Sector Organisations	Police and Immigration Departments	Joint inter-agency operations involving search and seizure; enforcement of tax laws and regulations.
		Banks	Provision of information relevant to collection of taxes.
		Tax Lawyers and Accountants, Chambers of Commerce, Professional Associations	Legitimacy; support for the improvement of voluntary compliance and administrative decisions.
		Trade Unions	Legitimacy; support for policy implementation and administrative decisions.
5.	Regional & International Level	Taxpayers and the general public	Legitimacy; support for policy implementation and administrative decisions.
		Regional Umbrella Bodies, Foreign Government Organisations, International Donor Agencies	Agreements on co-operation; provision of information relevant to the collection of duties and taxes; technical expertise and financial assistance.

Table 8.5: Some Key Institutions in the Revenue's Task Network and the Nature of the Resource Exchange

<sup>61</sup> Chapter 3 noted the often 2-way nature of resource exchange. The reason here for the one-dimensional focus is because for the purpose of this study, more important is an analysis of the nature and extent of the dependency of the focal organisations on other entities, plus the effect of the actions and behaviours of those in power positions.

### **8.3.1 ATTITUDES OF BEHAVIOURS OF CENTRAL GOVERNMENT AND OTHER GOVERNMENT INSTITUTIONS**

The task network of the two focal organisations comprises institutions, some of which are very co-operative in terms of the support and the resources which they provide; others not very supportive. Officials within both organisations spoke of the relatively good working relations between the revenue departments and the Ministry of Finance (MoF) and the overall support provided by top officials in the Finance Ministry. Where the departments lauded the efforts of the Ministry was in its provision of informational resources, its readiness to push through legislation in a timely manner, as well as its gradual involvement of the Revenue in setting revenue targets and providing input into policy formulation. According to the Consultant Adviser to the Director General:

‘Before, there was not much interfacing between tax policy and tax administration. Now there is more involvement before policy is set. Earlier, there was a lot of rolling back, where policy needed to be reworked, largely because of a lack of involvement of the administrators of such policy. The Tax Administration is now more involved in the strategic planning process of the Ministry of Finance’.

This information was confirmed during discussion with the Deputy Financial Secretary who stated that traditionally, the tax departments were consulted after the fact, but noted today’s thinking of having administrators more involved in the process.

Where interviewees agreed more support could be provided by the Finance Ministry is in the area of budgetary support. Both tax and customs senior officials



argued the need for stronger representation in defense of their annual budgets.

The Finance Minister is fully aware of such sentiments among some of his staff:

‘Some persons in the tax departments felt that both myself and the Financial Secretary were harsher on them compared to other Ministers and Permanent Secretaries in the running of their departments. My view was that if we are speaking of fiscal constraints and belt tightening, then we must lead by example, and it all starts at home. Some felt that my leading by example was too austere. Because of our minimalist inclinations, we could have denied people some of the things to which they were rightly entitled’.

Also providing a large measure of support are the government departments who provide the IRD and CD with informational resources. These include the Registrar of Companies, the National Land Agency, and the Titles Office. Whilst assistance can sometimes be slow and there may be a sense of reluctance to divulge the information, by and large there is a good measure of co-operation. Some of these institutions, since being afforded the legal status of executive agencies, have begun to charge user fees for their services. The revenue departments are sometimes exempted from the payment of such fees, or when they are required to pay, they are allowed immediate access to the information and billed afterwards. What the IRD pays is a discretionary amount and not the fee that is actually payable. The Deputy Commissioner of Operations, Inland Revenue noted that such information serves as a critical resource enabling the IRD to arrive at a holistic picture of taxpayer transactions, thereby informing subsequent courses of action. Absence of good relations, he argued, would be detrimental to tax

administrative functioning, given the lack of an alternate source to substitute for the provision of these types of information.

Central institutions such as the Treasury and the Establishment Division of the Ministry of Finance also impact on the functioning of the bureaucracy through exchange relations. Whilst relations with the Treasury are generally harmonious, highlighted is the practice of the Treasury's direct issuance of instructions to senior officials within the IRD informing of ceiling amounts to be paid for tax refunds, notwithstanding the size of total claims made by taxpayers within the given period.

Where the IRD and the CD struggle to maintain their independence due to the nature of resource exchange and the quality of working relations is with entities such as the Fiscal Services Limited (FSL) and the organisations involved in border management at the various ports of entry. As a private entity serving as the informatics arm of the entire Tax Administration, and as the central repository for tax and customs data, FSL has responsibility for implementing and maintaining the Integrated Computerised Tax Administration System (ICTAS) as well as other computerized tax systems. In the words of the IT Specialist at the Office of the Director General, 'FSL's method of working is choking the operations of the two departments, resulting in a great deal of internal frustration'. The FSL Board reports directly to the Finance Secretary. Prior to 2008, neither the Director General of the Tax Administration nor the heads of the revenue held any position of authority on the FSL Board. The result was a very weak technical linkage between these entities, with virtually no accountability of FSL to the Tax

Administration. The result of this loose relationship was FSL's establishment of its own priorities, uncoordinated software development, as well as serious gaps in the development of (new) business processes within the two departments. Before this situation was addressed in 2008, when the Director General assumed chairmanship of the FSL Board, lack of support from the FSL hampered the departments in their ability to leverage available in-house technologies to make critical decisions and to develop collection and enforcement strategies based on information mined from the various systems.

Customs faces a formidable threat to its decision making capacity from agencies involved in the joint border management function. Such agencies include the Police, Airport Security, Port Security, the Coast Guard, as well as the Immigration Department. Lack of clarity of roles and responsibilities, and sometimes overlapping roles, quite often result in jurisdictional problems. In the wake of 9/11, Customs airport officials argued a diminishing perception of the primacy of their role which is stated in the law, and their current subordination to the security function. Efforts are being made to correct such jurisdictional issues through initiatives such as joint inter-agency training and the signing of Memoranda of Understanding.

### **8.3.2 CAPACITY OF CENTRAL GOVERNMENT AND OTHER INSTITUTIONS**

A number of central government and other institutions within the organisations' task network face a number of capacity constraints. Such constraints can either serve as opportunities for or threats to discretionary functioning.

In the case of the Office of the Services Commission (OSC), consequent to the 2002 Delegation of Functions (DoF), its role is to monitor and oversee the implementation of the various HR functions as laid out in the Instrument. A number of human resource constraints prohibit the OSC from effectively executing this function. HR audits are therefore infrequently conducted, sometimes at most every three years. The Commission is staffed with five auditors, only two of which have been dedicated to the DoF. Speaking to the Head of the Commission, whilst there is a genuine desire to offer ongoing support to the departments and not act solely as record keepers, capacity constraints prohibit these types of supportive interventions. Given the in-house skills and competencies that already exist within both departments in the areas of human resources management and human resources development, the lack of intervention by the OSC provides bureaucrats in the focal organisations with more elbow room to perform the delegated functions.

Within the departments' enabling environment, the lack of capacity of entities such as the Office of the Parliamentary Counsel (OPC), Fiscal Services Limited, and the Tax Administration Services Department (TASD) present huge challenges for the focal organisations. Limited human resource capacity of the OPC results in some pieces of legislation taking between two to three years to be amended, because of the number of cases submitted by all the government departments. The IRD experienced a two-year wait for amendments to the General Consumption Tax Act. This lengthy time period has significant implications for the functioning of tax officials, particularly if the amendment in question attempts to plug some loophole which is being exploited by taxpayers.

FSL faces constraints in terms of available staffing and the ongoing high levels of attrition of qualified staff that leave to take up more lucrative paying jobs within the private sector. TASD, which provides training as well as legal services to the IRD and the CD, is also constrained by a lack of funding and a lack of manpower to deliver training. TASD's training department comprises six senior trainers, one senior computer training specialist, 2 trainers, and one training evaluation officer. Capacity constraints have resulted in very limited training co-ordinated by the TASD for the IRD and the CD, most training being offered is in the area of technical skills development. Relatively less training in leadership and management development is being designed and delivered to these two organisations. Essential for the exercise of policy autonomy and HR autonomy will be skill development that focuses on the development and application of competencies in areas such as management decision-making.

Whilst these organisations are limited in their capacity for providing the type of supportive environment needed by the organisations, both the IRD and CD have devised various means and coping strategies to counter these situations. For example, lack of support by the TASD in the provision of training is countered by the departments forging strategic partnerships with various tax and customs regional and international umbrella bodies and donor agencies and financial institutions, such as the World Customs Organisation, the Caribbean Customs Enforcement Council, the Caribbean Regional Technical Assistance Centre, the Inter-American Centre for Tax Administration, the World Bank, and the Inter-

American Bank. These organisations provide technical and/or financial assistance in various areas of institutional strengthening and capacity building.

## **8.4 THE IMPACT OF MICRO-LEVEL INTERNAL ORGANISATIONAL FACTORS**

### **8.4.1 INTERNAL STRUCTURES & SYSTEMS**

Despite their informal exercise of policy autonomy, and their abilities to design and implement a number of programmes and strategies to achieve fiscal goals and objectives, both the IRD and CD faced a number of constraints from inadequate and inappropriate internal structures and systems. With regard to internal structural arrangements, the IMF's 2006 Report highlighted the lack of a strong headquarter (HQ) function and the resulting lack of headquarter capacity within both departments. This was particularly the case for domestic tax administration where headquarter staff seemed preoccupied with daily operational priorities – release of goods, dispute settlement, revenue collection – with very little time for more strategic types of activities.

The Report noted that because of this structural weakness, essential headquarter functions which focus on the setting of operational policy, preparation and issuance of directives to the field, project management including the ownership of IT requirements, liaison, and the monitoring and evaluation organisational performance, were being performed on a purely part time basis by both managers and staff. Limited capacity to undertake the abovementioned roles was impacting on the organisation's ability to determine strategic priorities and to design and properly sequenced initiatives. To remedy such shortcomings the Fund proposed

new structures for both departments. The new structure proposed for the Customs department, illustrated in figure 8.6, would enable HQ activity to be restricted to issues such as policy development, planning, monitoring and liaison, thus allowing for better and more co-ordinated use of informal policy autonomy. Up to the time of the fieldwork study, the department was still operating under the original TaxARP structure.

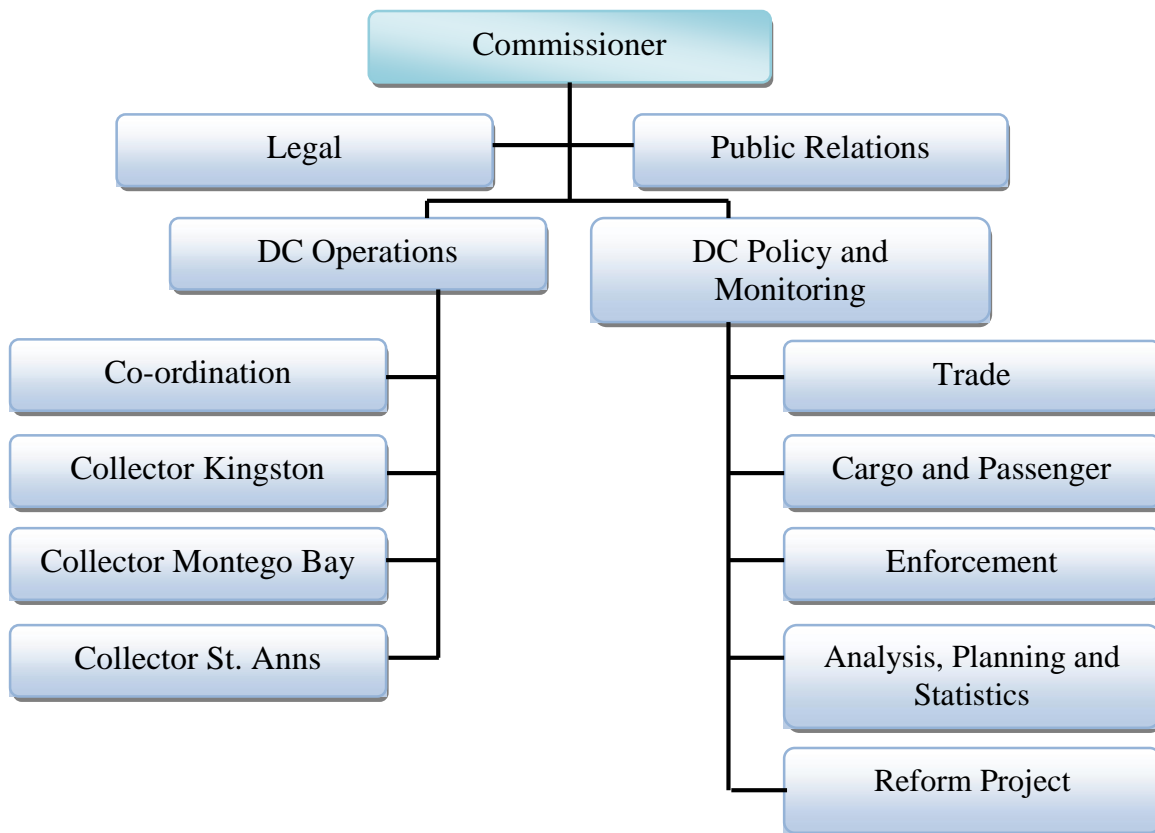


Figure 8.6: Proposed Customs Organisational Structure

Source: IMF Report 2006

Querying the reason for such failings in structural arrangements, the response by the Corporate Planner in the Customs department was that such outcomes were largely the result of institutional constraints – the departments' inability to increase staffing complement due to the need for involvement of the Finance Ministry's Establishment Division. Non-optimal manpower levels necessitated existing staff

having to pay attention to daily more routine functions, at the expense of high level planning and monitoring.

Likewise the absence of proper planning and information systems to assist in informed autonomous decision-making. Both the IRD and CD have in place Planning Units to co-ordinate and oversee the planning process. The IRD's Planning Unit, headed by a Deputy Commissioner in charge of planning is staffed by 11 specialists. Within the Customs department a Corporate Planner is assisted by two Directors and a Revenue Analyst.

With regard to the planning process, shortly after reform, the departments made use of a few fragmented performance measures which failed to relate to the organisations' core functions. Whilst there has been some improvement over the years in terms of the way in which planning is undertaken, there is still plenty of room for improvement. While corporate and operational work plans identify objectives and expected results designed to contribute to strategic goals, they fail to reflect the level of effort or changes needed to effect reforms. HR Specialist in the Office of the Director General emphasised the lack of formal training in a concept which was still relatively new to a number of government departments. With reduced spending budgets and subsequent cuts that usually impact on training, the departments' primary focus is the provision of technical skills training to operational staff.

Focusing on the nature and extent of automated management information systems, computerised systems exists within both departments, though in a fairly



limited supply. The core automated systems for the IRD and CD are the Integrated Computerised Tax Administration System (ICTAS) and the Customs Automated Services (CASE) respectively. ICTAS was conceptualised to capture a 'whole of transactions' view of the taxpayer and the level of compliance with statutory tax obligations. The system would offer a range of operational information to management and allow the free flow of information between the departments. Whilst these core systems have been in place for some time, several of the modules were still not functional. Management information from ICTAS, for example, is inadequate for the dynamic management of arrears (information on the intake of new arrears, the number of accounts outstanding, and adjustments made to taxpayer accounts). Absence of such critical information results in the inability of management to properly address issues such as workflows, as well as the development of strategies and programmes to achieve both financial and non-financial targets. Equally problematic is the lack of system integration between HQ and field offices, with field officers conditioned in their decision making capacities due to their need to refer a number of issues to senior officials within HQ.

Problems with upgrading the computerised systems arise in part from the departments' resource dependency on entities such as Fiscal Services Limited (FSL) that form part of the departments' task network environment. FSL's ability to establish its own priorities, to respond at will to requests for technical assistance, and its overall lack of accountability to the revenue departments resulted in the slowed pace of modernisation. Also at issue was the dependency of the

departments on government subventions to finance payment for system upgrades.

Whilst poor structural arrangements and lack of proper information systems impacted negatively on the ability of both departments to function strategically and to leverage their technologies to make better informed decisions, such shortcomings were more pronounced in the IRD than in the CD. Compared to the IRD, the CD was much more modernised in terms of its level of automation, both internally, as well as in regard to the systems in place for improved service delivery such as electronic filing and electronic manifests for import and export transactions by importers. The IRD languished far behind in its primary state of mostly manual record keeping.

The IRD's demonstrated lack of capacity for efficient revenue collection and proper debt management due to its weak structures and internal management systems, was to result in two highly publicised interventions by the Finance Ministry to rally IRD officers to collect outstanding tax arrears. The second initiative, an Accounts Receivable Conversion (ARC) Project undertaken in the FY 2005/06, was an aggressive campaign to collect J\$5b in undisputed receivables. The programme involved a special collections group of 100 officers who were exposed to special training in arrears collection and in reconciling taxpayer accounts on the ICTAS system. The group, divided into four team covering the four tax administration regions produced weekly collection reports for a project co-ordinator who gave overall managerial directions to the Project. During the 5-month period November to March, the Project collected a total of J\$5.6b in

arrears of individual income taxes, PAYE, Education Tax, and General Consumption Tax. The investment in reconciliation of taxpayer accounts showed the extent to which the IRD could not rely on ICTAS to produce accurate records.

#### **8.4.2 CONTROL OVER RESOURCES**

Both the IRD and CD have limited control over resources and are severely constrained in their resource availability. Lack of financial autonomy and dependency on government appropriations have resulted in far from adequate financial and physical resources. Budget ceilings, monthly subventions which often do not match monthly warrants, as well as reductions in requested supplementaries all serve as stark reminders that despite reforms, cost cutting is still a major issue. Lack of funding has resulted in the departments' inability to make necessary investments to improve organisational capacity, for example through training and the purchase of IT equipment.

The IRD and CD also face serious human resource constraints. Whilst the Customs operates on average at about 95% of the established staff complement, the IRD operates on average at about 80%. Despite delegated authority for the management of human resources as part of the 'Delegation of Function', there was no commensurate increase in the staffing level to effectively undertake the new roles. The staff complement in the HR department of the IRD remained static at nine persons<sup>62</sup>. Within the CD there was a slight increase in the staff levels

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<sup>62</sup> This included 1 Director, 2 Senior Personnel Officers, 2 Personnel Officers, 1 Human Resource Management Information Systems (HRMIS) Officer, 2 Records Officers and 1 Secretary.

from seventeen to twenty-two<sup>63</sup>. Far outside the Jamiaca public sector norm of a ratio of one HR Specialist to one hundred employees, the HR complement in both departments constrained them from effectively fulfilling their delegated roles. Understaffing also exists in key areas such as information technology, accounting, compliance, and enforcement. High attrition rates are experienced in some positions such as auditing, where the remuneration in the private sector is much higher.

Departments are still largely dependent on central institutions for the provision of critical resources. Neither organisation is in a position to increase current staffing levels, partly because the Delegation of Function Instrument is not that far-reaching in its scope and partly because of restraints emanating from the MOU pact signed between government and the public sector union. Nor can they increase salaries to a level to motivate persons to remain within the organisation.

Overall, it can be argued that factors such as weak internal structures and limited resources availability restrict the internal capacity of the two organisations to implement policies and programmes at a level and within timeframes largely of their own choosing.

Comparing the two departments and their abilities to escape various resource constraints, the Customs department is far better placed in terms of its dependency relation and position of power vis-à-vis the Finance Ministry. The department is able to extend its funding through additional income generated from

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<sup>63</sup> This included 1 Director, 1 Personnel Manager, 1 Management Analyst, 1 Training Manager, 1 Performance Manager, 1 Health and Safety Officer, 1 Employee Relations Officer, 2 Training Officers, 3 Personnel Officers, 4 Secretaries, 1 Leave Clerk, and 4 Records Officers.

the charging of user fees. Partnership with the U.S. government's Border Protection Services through the Container Security Initiative also provides the organisation with an alternate source for acquiring critical resources to assist in programme implementation.

## **8.5 CONCLUSION**

This chapter presented findings on influences on the practice of bureaucratic autonomy in the Jamaican case study organisations. Research findings showed that a number of factors influenced the exercise of administrative discretion in the Inland Revenue and Customs departments, some factors serve as constraints, while others provide opportunities for action. Table 8.6 summarises these influences and the main dimensions of autonomy affected. Juxtaposition of the summarised information in table format helps in presenting a more convincing answer to the research question relating to the relative importance of the three levels of environment being investigated. In the table, a tick denotes where influences serve as opportunities for action, whilst a cross is used where factors serve to condition the exercise of autonomy along the stated dimension.

Several factors within the Revenue's broader institutional environment condition the capacity to act along a number of autonomous dimensions. Regarding interest group participation, findings show that whilst groups with vested interests in agency operations do play a positive role in the furtherance of organisational objectives, the bureaucracy, on occasions, face serious challenges to policy decisions taken in stark contrast with the interests of specific stakeholder groups

Level of Environment	Influences / Factors Conditioning Autonomy	Dimension of Autonomy Affected	Nature of Affect √ / x	Comments
<b>Institutional Environment</b>	Interest Group Participation	• Policy autonomy	√	Stakeholder support for policies and programmes.
		• Interventional autonomy	x	External encroachments on internal organisational functioning.
		• HRM autonomy	x	Inability to make use of HR flexibilities in the face of corporatist arrangements.
		• Financial Autonomy (Customs Department)	√	Reduction in level of financial dependence on MoF due to substitutability of resources provided by interest group to further its interest (Container Support Initiative).
	Legal/Administrative Framework	• Policy autonomy	x	Despite amendments to revenue laws providing for better enforced compliance, policy autonomy still fettered, e.g., as a result of inability to access 3 <sup>rd</sup> party information and act on such information.
<b>Institutional Environment</b>	Legal/Administrative Framework	• Interventional autonomy	x	Revenue laws, public administration laws, as well as supranational legislation placing local institutions such as the judiciary and various central bodies, as well as international bodies such as the WTO in power positions.
		• HRM autonomy		
		• Financial autonomy		
		• Financial management autonomy		
<b>Institutional Environment</b>	Legal Tradition	• Policy autonomy	x	Detailed style of drafting legislation providing limited elbow room for making regulations
		• Interventional autonomy	√	Movement towards purposive approach to statutory interpretation permitting increased flexibilities for administrative decision-making.
	System of Government	• Policy autonomy • Interventional autonomy	√ √	Generation of a merit-based bureaucracy under the Westminster Parliamentary system of government has resulted in little political interference in day-to-day operations, except in matters relating to revenue targets.
<b>Technical Environment</b>	Relations with Central Government and other Government Institutions	• Policy autonomy • Interventional autonomy	√ √	Generally good relations providing opportunities to implement devised programmes with minimal obstructions.
	Capacity of the Centre and of other Government Institutions	• Policy Autonomy • HRM Autonomy	x x	Limited capacity for IT systems development and human capital development of entities charged with support of the Revenue.
<b>Organisational Environment</b>	Internal Structures and Systems	• Policy autonomy	x	Structural weaknesses and lack of proper systems impacting on the Revenue's capacity for policy implementation.
		• Interventional autonomy	x	Demonstrated lack of capacity for debt management and tax collection occasioning some intervention by the Finance Ministry.
	Resource Availability	• Policy autonomy  • HRM Autonomy	x  x	Resource availability impacting on the Revenue's ability to implement devised programmes. Limited capacity to act on formal autonomy to develop staff due to lack of financial resources.

Table 8.6 Summary of Influences on the Practice of Autonomy at the 3 levels of Environment

such as importers and car dealers. Autonomy came under threat with the implementation of corporatist arrangements, when delegated authority for decision making on HR issues such as appointments was pulled back to the centre. Where changes recommended by the bureaucracy run the risk of a political fall-out between politicians and their constituents, change in the status quo was very difficult to achieve.

The Revenue operates within a legal/administrative framework that is highly centralised with a vast amount of controls, formal rules and regulations. Revenue laws incorporating provisions that require judicial involvement for access to third-party information as well as for the imposition of fines and penalties reduce bureaucrats' interventional autonomy from the judiciary. A number of central institutions with approval and/or oversight functions impact on the agencies' actual exercise of policy, financial management, human resources management, and interventional autonomy. For example, despite formally delegated powers to appoint personnel, capacity to act through the recruitment of high caliber staff was constrained due to the existence of a centrally devised pay and grading system that remunerated far below market rates and which could not be adjusted at the local organisational level. Likewise, central approval, monitoring and oversight of contract awards hindered the informal practice of financial management autonomy in procuring goods and services.

While Jamaica's legal tradition with its 'fussy' precise style of drafting revenue laws left very little room for the Revenue to draft subsidiary regulations and little opportunity to interpret meaning, the movement towards a purposive approach to

interpretation of taxing legislation provided functionaries with greater flexibility to exercise policy autonomy. Administrative decisions aimed at enforcing compliance through taxpayer fulfillment of their taxing obligations are now finding greater favour and support from the judiciary.

Analysing factors at the technical environment meso-level of organisational functioning, relations with some central institutions and other departments provide opportunities for the exercise of policy autonomy. Revenue departments benefit from the support of the Ministry of Finance, for example, in the latter's ready approval of their policies and programmes, in its timely provision of informational resources and more recent involvement of the departments in the quantitative revenue target setting exercise, as well as in its support for most recommendations proposing amendments to existing legislation. A major constraint, however for the Customs department, involves relations with other agencies operating at the various border control areas. Ongoing strained relations and jurisdictional issues in border management hamper the CD in the performance of its duties in revenue collection and societal protection.

Still within the technical environment, the capacity of central institutions and other departments is another factor impacting either positively or negatively on discretionary decision-making. For example, the limited capacity of the Office of Services Commission for central oversight over the management and development of human resources provided bureaucrats with increased interventional autonomy, and thereby flexibilities to exercise formally granted powers to appoint, train, discipline and dismiss staff. Constraints in the practice of



policy autonomy and human resources management autonomy stemmed from heavy resource dependency on entities such as Fiscal Services Limited with its limited capacity to provide critical technical support in the development of IT business solutions and software, and the Tax Administration Services Department with its limitations in the provision of funding needed to develop human capital.

Focusing on factors within the organisations' internal environment, structural weaknesses affected the departments' capacity to undertake critical tasks such as strategic and operational planning, strategic management, strategic communications, as well as the monitoring and evaluation of performance. This in turn affects their ability to make good use of informal policy autonomy through proper identification of strategic priorities, the setting of realistic performance targets, as well as the design and implementation of programmes and initiatives to address ongoing and emerging challenges in tax and customs administration. It was this failure to demonstrate capacity for debt management and collection enforcement that resulted in the Ministry of Finance's encroachment on the interventional autonomy of the Inland Revenue Department. With regard to resource availability, inadequate financial, physical (computers, IT equipment and physical plant) as well as human resources impact on the organisations' capacity to act in terms of their ability to properly manage and develop human capital, as well as to execute policy through the implementation of some devised programmes. These internal organisational constraints which weaken the overall capacity of the focal organisations, to a large degree, originate from resource dependency, high level top-down controls imposed by central government

institutions, as well as from a lack of technical support – i.e. from factors within the broader institutional and technical environments.

Whilst the Revenue is able to develop coping strategies to deal with constraints in its internal environment, such as tapping alternate sources for access to financial or physical resources, resources within the technical and more so institutional environments are irreplaceable, hence constraints are more pervasive at these levels.

The following chapter nine presents findings for the Dominican case.

## **CHAPTER 9**

### **FACTORS CONDITIONING THE PRACTICE OF AUTONOMY: THE DOMINICAN CASE**

#### **9.1 INTRODUCTION**

Mirroring Chapter 8, this chapter presents for the Dominican case, factors conditioning the practice of autonomy within the three levels of analyses, at the macro, meso- and micro-levels of organisational functioning. The reader will recall from Chapter 4 the key-hole comparison approach being adopted in the study whereby the level of analysis for the Dominican case is slightly less detailed than that for the Jamaican case.

#### **9.2 THE IMPACT OF MACRO-INSTITUTIONAL FACTORS ON AUTONOMY**

The institutional environment of revenue administration in Jamaica was illustrated in Figure 8.1. This environment in the DR is somewhat similar, except in some crucial respects. Factors such as the system of government, the legal tradition, the strong role of the military, as well as the absence of organised labour all differentiate the DR from her neighbouring sister. The following sections analyse the influences of these and other factors on the exercise of administrative discretion.

### **9.2.1 INTEREST GROUP PARTICIPATION**

Efforts by the DGII and DGA to reform and modernise their organisations, through initiatives such as process re-engineering and the leveraging of information and communications technology have historically been met by very limited opposition from constituent stakeholders. The institutionalisation within both organisations of a process of engaging with the various entities through the conduct of various consultative meetings has resulted in an ongoing high level of support for the revenue agencies. The support which both entities received during the passage of the two autonomy laws from entities such as the 'National Business Council' (CONEP) and the 'Institutionalism and Justice Foundation' (FINJUS) stemmed not only from an appreciation of the need to modernise, but also from the history of good working relations.

Enlarged scope for bureaucratic autonomy also stem from the non-existence of organised labour and the usual attendant threats of encroachment on operational decision-making. In the DR, the activities of trade unions have been severely circumscribed by civil service laws outlawing unionisation. Employees of neither the DGII nor the DGA are members of any public service union. The law permits for staff associations but no such entities exist within the focal organisations.

Focusing on threats from interested stakeholders outside of national borders, Chapter 8 discussed the involvement of the United States government and the U.S. Customs and Border Protection functioning alongside host country Customs administrations enrolled in its Container Security Initiative (CSI). CSI was implemented at the DR's Port Caucedo in 2006. Officials interviewed at the Port

spoke of the 'fraternal attitude' of the CBP officials, describing the CSI as a positive experience. Co-operative relationships stem in part from the agreement which was signed at the national level between the two governments. The CBP official interviewed also spoke of technical assistance being provided to local staff in the inspection of Dominican imports and non-U.S. bound exports – tasks outside of their remit. The provision by the U.S. government of physical resources (in the form of hand-held and large mobile x-ray and scanning equipment), as well as its provision of informational and knowledge resources has resulted in its serving as a substitute or alternate source for the acquisition of critical resources.

On occasion however, autonomy has been under threat from stakeholder groups. In 2006, with the loss of fixed government subventions and the new funding regime based on aggregate tariff revenues and funds generated by service fees to support its operations, the DGA proceeded to implement a user fee based on the value of the merchandise entering the country. In contravention of the WTO and CAFTA-DR rules, the business community complained about the legality of the imposition of such fees. The outcry resulted in a modification of the law which now makes provision for specific user fees based on weight and volume, rather than fees calculated on the value of the merchandise.

Arguably, the most serious threat to the structural, policy and interventional autonomy of the tax and customs departments came from the International Monetary Fund (IMF) as one of the key stakeholders with an interest in the functioning of the revenue collecting agencies. In January 2005, the IMF approved a 28-month Standby Agreement (SBA) with the DR for approximately

USD\$648.2m. In 2006, the Fund for the fourth time, postponed revisiting the 5<sup>th</sup> and 6<sup>th</sup> 'Letters of Intent' of the SBA, causing a partial suspension of the Agreement. Further disbursement was conditional on a number of factors, such as government's assurance of fiscal sustainability threatened at the time by sluggish revenue performance; the provision of a durable framework for the efficient conduct of fiscal policy; as well as the identification of effective sources to enable increases in tax collection.

Whilst one top level official spoke of the Fund's attempts to obstruct Dominican progress, 'taking drastic action against the country's development by blocking the way towards the Millenium Development Goals'<sup>64</sup>, another senior official spoke of tax reforms being prepared at "gun point" by pressures from the IMF<sup>65</sup>. Such claims resulted in a rejoinder from the Fund's in-country representative, Mr. Erik Offerdal who argued the Fund's commitment to supporting the Dominican authorities to reach the objectives of its economic programme. Proposed IMF recommendations were not 'impositions', but merely part of a 'suggested menu of options'.

Strenuous fiscal conditionalities of the nature described above resulted in a complete reprogramming of Dominican public expenses, and the sacrificing of spending to comply with SBA goals. For the tax agencies, encroachments on bureaucratic autonomy related to the focus also placed by the IMF on tax incomes. Joint agreement between the Dominican government and the Fund on

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<sup>64</sup> Technical Secretary of the Presidency, Mr. Temistocles Montas, as reported in the 'Dominican Today' Newspaper of 16 September, 2006.

<sup>65</sup> Finance Minister, Mr. Vicente Bengoa, as reported in the 'Dominican Today' Newspaper of 15 November, 2006.

tax policy and tax administrative reform measures resulted in government's total loss of control over the setting of macro-economic fiscal and revenue targets. The result was a top-down imposition of collection targets by the Ministry of Finance, without any consultation with or input from the collection agencies. The IMF demanded and received copies of budget and income estimates for the departments as well as quarterly reports which enabled checks to be made on variances in each tax collection area. Reduced scope for interventional autonomy was rationalised by the Fund's Resident Representative as follows, during our interview:

'In fiscal matters, it comes down to making a distinction between issues in the context of general surveillance and monitoring and that of Fund support. In the former area, involvement is more in terms of providing technical assistance through capacity building, making recommendations based on international best practices, and our experience in the field of revenue administration. In the latter area, governments are required to meet certain fiscal targets and benchmarks on expenditure controls and mechanisms. They are certain hard targets which they have to comply with in order to get access to funds. We do not consider it the case of our imposition of targets and figures'.

## **9.2.2 THE LEGAL/ADMINISTRATIVE FRAMEWORK**

### **9.2.2.1 The Legal Framework**

The Tax Code (Law No. 11-92 of 1992) and the Customs Law (Law No. 3489 of 1953) are the two primary laws in the DR governing domestic taxation and international trade. These laws provide the DGII and the DGA with fairly extensive powers for the implementation of tax policy. The laws provide the revenue

agencies with powers to summons, to distrain or have distrained the property of individuals, to inspect and audit, to foreclose, to seize and retain documents and goods, and to penalise for offenses committed. The Tax Code incorporates at Article 2, a general anti-avoidance provision which allows the DGI to ignore the existence of legal entities or certain transactions when used to secure tax avoidance.

Both departments make good use of the powers granted under the tax and customs legislation. Intensifying its fight against evasion, inspectors of the DGII take to the streets closing warehouses and those businesses which have failed to comply with their tax obligations. For the FY 2008, the DGII closed a total of 66 businesses (Dominican Today, December 30, 2008). Likewise the DGA which seizes items, including goods, motor vehicles as well as entire buildings, in cases of fraud and undervaluation.

The main failings in existing legislation impacting on autonomous bureaucratic functioning involve current institutional arrangements for handling tax cases, access to third party information, sanctions being applied to the evasion of taxes, as well as the requirement of the Revenue to comply with supranational legislation. Within a framework where penal cases are dealt with through the normal court system, delayed rulings not only result from the sheer volume of cases, but also from the time required for judges to evaluate and assess cases.

Regarding third party information, Article 56 b) of the Law No. 183-02 that constitutes the 'Financial and Monetary Code' forbids the provision of account



details to persons other than the account owner or persons expressly authorised by the owner. The same text states: 'the information that the regulated companies supply to the Tax Administration, the organs responsible for the prevention of money-laundering and to the penal courts of the Republic should be facts, provided case-by-case through the Bank Superintendency, either in relation to receiving the request for the information or to the provision of the information'. In essence, both the request and the response must traverse through the Superintendency. Tax officials argued that the slow-down generated by this bureaucratic formality impacts negatively on efforts at timely prosecution of offenses.

Also at issue are the current provisions for dealing with tax evasion, which in the DR is a penal and not a criminal issue. Given limited success with its strategy of gentle persuasion, coupled with a compliance rate of below 30%, recommendations for the passage of a Bill criminalising tax evasion was deemed 'necessary to guarantee the efficiency which institutions such as the World Bank and the IMF were demanding of the Dominican government'<sup>66</sup>. Despite strong opposition to its passage by the business community, the DGII argued that the deterrent effect resulting from the threat of a criminal complaint would assist the department in its ongoing efforts at devising ways and means of executing its Anti-Evasion Plan.

Compounding such legal constraints is the requirement for the revenue agencies to observe provisions in supranational laws which take precedence over domestic

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<sup>66</sup> Daily News Newspaper quoting head of the DGII, Juan Hernandez.

legislation. In 1995, the DR joined the World Trade Organisation (WTO) and in 2001 became a signatory to the WTO Agreement on Customs Valuation (ACV). Lack of autonomy of the DGA to uplift declared prices and to apply minimum values in cases of suspected undervaluation resulted in revenues from international trade being placed at serious risk. Likewise the requirement to observe provisions in the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which constrained customs officials in their ability to take autonomous decisions on how to deal with cases involving breaches of intellectual property rights. Notwithstanding such requirements, the DGA's flouting of WTO rules through its practice of with-holding merchandise at the various ports of entry pending its own internal investigations remained a source of complaint by several importers.

#### **9.2.2.2 The Administrative Framework**

Chapter 7 provided some information on the administrative framework which provided the context for revenue administration. Pre-reform, the Ministry of Finance and the Office of the Technical Presidency (Secretaría Técnica de la Presidencia), as well as central institutions such as the National Treasury (Tesorería Nacional), the National Budget Office (ONAPRES), the Office of the Comptroller General (Contraloría), the General Directorate of Government Accounting (Dirección General de Contabilidad Gubernamental), and the Audit Commission (Cámara de Cuentas) undertook a number of functional as well as monitoring and oversight roles. The various laws, regulations and guidelines administered by these entities resulted in a number of ex-ante and ex-post

controls, on some occasions the various requirements for compliance resulting in a duplication of effort and a further drain on fairly limited resources.

The new autonomy Laws 226-06 and 227-06 made clear that the new formally decentralised entities would continue to operate in an administrative framework subject to the economic, fiscal and tax policies of central government, regardless of the powers granted under the new laws. Post reform, the 'cleaned administrative' framework incorporated arrangements which continued to impact on bureaucratic functioning. Notwithstanding their newfound formal autonomy in the management of human resources, including authority to determine pay scales and set levels of remuneration, the departments were forced to join other government entities in across the board salary reductions as part of government's austerity measures to halt rising public debt. Appendix XV provides details of Circular No. 27 dated 5 December, 2006 from the Office of the Comptroller General, communicating information on the Decree of the President of the Republic demanding payroll cuts.

Despite their financial, and financial management autonomy, the focal organisations still have an undertaking to submit their budgets to ONAPRES primarily to check its linkage to national strategic goals and priorities. The approval of ONAPLAN is still required *ex ante* any spending on large capital projects. Public procurement laws and regulations still guide the performance of this task, oversight roles being performed by the Government Supply Commission.

In order to ensure that autonomy is practiced within a proper framework of accountability, oversight is provided by a number of central bodies, along with a number of requirements on the part of the organisations for reporting on performance. Law 10-04 on the Audit Commission of the Dominican Republic established the Commission (also referred to as the Accounts Chambers) as the supreme audit body with a responsibility for external audit. The Commission's remit covers the entire remit of public administration, including the autonomous institutions. The focal organisations therefore undergo compliance audits that compare their approved budgets against actual expenditures. The DGII and DGA are also subject to the Audit Commission's fulfilling of any requests made by Congress or the Finance Ministry for special audits or investigations of their internal operations. Internal audit oversight, primarily in the form of ex post checking, is provided by the Office of the Comptroller General which has its own designated Internal Audit Units operating both in central government agencies, as well as within the decentralised non-financial public bodies.

In the area of performance reporting, both organisations are required to submit daily reports on revenue performance to the Finance Ministry, the National Treasury and the Comptroller General. As a pre-condition of the 2005 Standby Agreement with the IMF, the organisations also have an undertaking to submit very detailed monthly and quarterly reports to the Fund.

### **9.2.3 LEGAL TRADITION**

The Dominican legal system is based on the civilian Romano-Germanic legal tradition. A hierarchy of enacted law, with the Constitution at the apex, followed by

legislation (civil and commercial codes), executive decrees, administrative regulations, and finally local ordinances, serve as the primary source of law. Also of increasing importance is the influence of various international treaties and conventions. Acting as secondary sources of law or authorities, are case law (jurisprudence) and doctrine. While case law plays an increasing role in the legal system, its use is still to some extent restricted because of the necessity to first interpret and apply the written law. Such law, which is not binding, is therefore applied in the event where primary sources are absent, unclear or incomplete and jurisprudence can shed light on the situation.

The following two sections analyse, in a format similar to chapter 8, the influence of legal drafting style and statutory interpretation on the exercise of administrative discretion.

#### **9.2.3.1 Legal Drafting Style**

Chapter 3 highlighted the traditional ‘fuzziness’ of civilian tax codes and laws and the requirement of regulations to fill in a number of the blanks; such requirements providing the bureaucracy with increased opportunities for local decision-making. Research findings show, however, that particularly as relates to tax and customs laws, legislative drafting style is not in keeping with the tradition as legislation is very detailed and specific in its nature, providing direction to bureaucrats and taxpayers alike. Figures 9.1 – 9.3 present the results of content analyses of sections of the Dominican Tax Code (Codigo Tributario, 11-92) and the Customs Act (Law 1189 of 1953). Figure 9.1 shows how drafters, in Article 287 of the Tax

Code, set out the law on allowable deductions for the purpose of calculating taxable income.

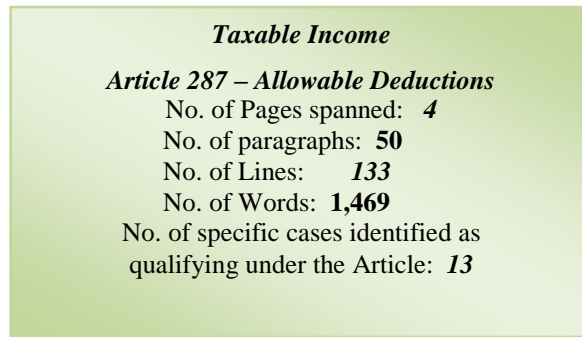


Figure 9.1: Content Analysis of Article 287 of the Dominican Code 11-92

The thirteen specific cases qualifying under the Code for income tax deductions are outlined in detail over four pages, which in total comprise 50 paragraphs, 133 lines, and 1,469 words. Figure 9.2 shows provisions in the said article for deductibles for depreciation. After clearly defining the concept, the law then categorises such assets, affixes the percentages for depreciation according to each category, outlines the methods of accounting for the assets as well as the timeframe for the entry of such assets into records. The legislation also distinguishes between new asset acquisitions and assets of owners' own construction, specifying what charges must be computed to arrive at a value for including such assets into the asset account.

## DOMINICAN TAX CODE 11-92

Article 287 (e): Depreciation. Amortization for wear and tear, breakdown, and old age, as well as justifiable losses from disuse of property used in the business operation.

I. Depreciable assets. For the purposes of this Article, the concept of depreciable assets means the assets used in the business that lose value from wear and tear deterioration, or disuse.

II. Deductible amount. The amount allowed for deduction for depreciation for the fiscal year for any category of assets, will be determined by applying to the assets account, at the close of the fiscal year, the percentage applicable for that category of assets.

III. Classification of Depreciable Assets. Depreciable assets must be classified in one of the three following categories:

Category 1. Buildings and their structural components.

Category 2. Automobiles and light trucks for everyday use; office furniture and equipment, computers, information systems, and data processing equipment.

Category 3. Any other depreciable property.

The assets classified in Category 1 will be kept on the books on the basis of separate assets accounts.

The assets classified in Category 2 will be placed in one single account.

The assets classified in Category 3 will be placed in one single account.

IV. The applicable percentages for Categories 1, 2 and 3 will be determined according to the following table:

Category	Applicable Percentage
1	5
2	25
3	15

IV.I. Depreciable assets which are leased out will be depreciated according to the following:

- (1) 50% for assets corresponding to Category 2; and
- (2) 30% for assets corresponding to Category 3.

An enterprise owning these assets will carry separate joint accounts, as previously indicated for their leased assets.

V. Additions to the Assets Account. The initial addition to the assets account through the acquisition of any asset will be its cost plus insurance and freight, and installation costs. The initial addition to the assets account for an asset of one's own construction will include all taxes, charges, including customs duties, and interest attributable to such assets from periods prior to their placement in service.

VI. Moment of Ingress of the Assets into the Account. An asset will be considered part of an account when the following conditions take place:

- (1) If the asset is of one's own construction or falls in Category 1, when the asset is placed in service;
- (2) in the case of any other asset, when the same is acquired.

Figure 9.2: Article 287 (e) of the Dominican Tax Code 11-92

Figure 9.3 likewise illustrates the degree of detail typically used in the drafting of provisions within the Dominican Customs Act (Law 3489).

### *Contraband*

Article 167: Describes the offense of smuggling as the entry or exit from the national territory, as well as the internal transport, distribution, storage, or the public or clandestine sale of goods, tools, products, machinery, spare parts, materials, raw materials, commercial or artistic objects and articles that have been passed or not by the customs of the country, with or without the complicity of any officer or authority, without having complied with all the requirements or full payment of duties and taxes provided by the import and export laws. In addition, for the purpose of this law, the crime of smuggling also includes the traffic of exempted goods, without previous filling of the requirements of the Act's exemptions, for the sale of the same.

Paragraph I: the crime of smuggling is committed when the holder of any goods is unable to furnish, at the request of competent authority, within a period of 24 working hours of the day of being caught, the requested documentation to show that he has complied with all the tax provisions contained in this article, or that he acquired the goods from a person who in turn can prove within that same period, that he has complied with all the requirements.

Paragraph II: In no case will it be accepted a plea by the holder, person or persons unknown, of the penalties provided for by this law, and the holder will be considered, for all purposes of the same, as the offender responsible.

Paragraph III: The cigars, cigarettes, and drugs that are confiscated by virtue of this Act, may not be sold, and must be publicly destroyed within forty-eight (48) hours of having been proven the crime of smuggling, as provided in paragraph I of this article. This destruction will be conducted in the presence of a Commission appointed for this purpose, which will produce minutes to be forwarded to the Customs Collector. Other confiscated objects, if part of the free trade movement, will be sold by the Customs Office at public auction in a period of no more than thirty (30) days, and the proceeds deposited into the Treasury.

Figure 9.3: Article 167 of the Dominican Customs Act (Law 3489)

After defining the term and the points in time at which such a crime is committed, legislators then clearly specified those acts that constitute an involvement in such behaviour. Also specified are the administrative procedures which must be followed for the disposal of certain identified goods, as well as for those goods that are part of the regular free trade movement.

According to one attorney interviewed, such detail is necessary in order for judges to correctly apply the law, even though for administrators, such specification can prove very demanding, limiting their freedoms to make internal decisions. In the words of the National Director of the DGA, if this particularity did not exist, it would turn the collection of revenues (and its derivatives) into a 'virtual national trauma,



that would obstruct even the normal course of the State' (Miguel Cocco, quoted in the Dominican Today, Jan. 22, 2007).

### **9.2.3.3 Statutory Interpretation**

The legal philosophy underpinning taxing legislation in the DR aims toward the achievement of a balance between the rights of taxpayers and the supremacy of the State to make proper determinations for the public good. Hence, whilst there are numerous provisions scattered throughout the various revenue laws protecting the rights of individuals, for example through the incorporation of administrative procedures which must be followed by bureaucrats, provisions are also inserted within the said legislation which favour the State by specifying the authority of the Revenue. In the latter case, for example, Article 2 of the Tax Code states:

'The legal forms adopted by the taxpayers does not impose any obligation on the Tax Administration, which can attribute to the situations and actions that have occurred a meaning in accordance with the facts, when from the tax law it follows that the activity generating income was defined by attending to the reality. On the other hand, when the activity generating income is defined attending to the legal form itself, then it must attend to that'.

Applying such philosophy to methods of statutory interpretation, research findings show that cases decisions are reached taking into consideration a combination of factors relevant to the case. As one Judge, Justice Fernandez of the Tax and Administrative Litigation Court<sup>67</sup> opined:

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<sup>67</sup> This court has been renamed the Superior Administrative Court)

‘Before, maybe one could say that a number of judgements tended to favour the taxpayer. Whilst a few judges still stick to the literal approach, we are now crossing over that bridge between the strict literal approach and the purposive approach to interpreting the Tax Code and taxing legislation. Along with the issue of fundamental rights, there is a need to look at the facts that could affect the conclusion. In this particular area of taxes, the principle of the general interest has become quite strong. We have to look at the benefit to society, not confining ourselves to looking at the benefit of the particular person in front of the court’.

This summation was borne out after examination of a review of a few tax cases lodged in the Supreme Administrative Court, namely judgements in the case of *Electricity and Co-generation Uvero Co., S.A v. General Directorate of Internal Taxes (2007)*; *General Directorate of Internal Taxes v. Development and Credit Bank ADOPEM, S.A (2008)*; and *Sun Development, S.A (Melia Caribe Tropical) v. General Directorate of Internal Taxes*. In the first case involving Electricity and Co-generation Uvero Co., S.A (hereafter the Electricity Co.), the matter involved the payment of minimum taxes and loss deductions, with the requirement for judicial interpretation of Article 287 (k) of the Tax Code. The Article states: ‘Losses sustained by enterprises in their economic activities will be deductible from the profit obtained in the fiscal years that immediately follow that of the losses, provided that this deduction cannot extend beyond three fiscal years’. The Electricity Co. appealed against Resolution No. 271-6 Reconsideration issued in 2006 by the DGII, which amended the company’s affidavit for Income Tax for the fiscal year 2004. The appellant argued that the Revenue had exceeded its authority, and that the DGII’s allegation that pursuant to the law, the income tax paid at a fixed amount of 1.5% of monthly gross sales for 2003 was a final

payment (i.e. payment on account of such tax) not compensatable or deductible during the fiscal year 2004, had no legal basis.

The court, in its ruling, agreed with the taxpayer's argument that the DGII's '...attempt to exclude from the affidavits of income tax for the fiscal year 2004, losses incurred by the taxpayer during the tax year 2003 only under the allegation that in 2003 the tax was paid according to the aforementioned 1.5% of sales on gross income, and therefore is irrelevant for 2004 according to Article 287 (k) of the Tax Code, violates the principle of legality in tax, provided for in the Constitution'. According to the provision in Article 8, clause 5 of the DR Constitution, 'no one shall be compelled to do what the law does not require or prevented from doing what the law does not prohibit'. If the law does not specify that the minimum payment may not be offset by losses, the tax administration when interpreting the law cannot prevent their compensation. The DGII had therefore exceeded the scope of its authority by implicitly repealing the application of Article 287 (k) without a legal basis that supported the repeal.

This judgement was to be later challenged in 2008 in an appeal which also related to minimum taxes and loss deductions, this time involving the DGII (appellant) and the Development and Credit Bank ADOPEM, S.A (hereafter the D&CB). The Revenue argued that rulings by the court allowing loss reductions in cases of payment by the taxpayer of the minimum of 1.5% gross income is a wrong application of the true spirit of the laws<sup>68</sup> which established this provision.

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<sup>68</sup> The 1.5% minimum payment of income tax on gross income was established by Law Nos. 147-00 and 12-01.

According to the DGII, these laws were aimed at incorporating special provisions in the income tax itself, by creating an assumption of profits or income during the 1.5% period of payment, which thus rules out the existence of losses against which claims can subsequently be made. Ruling in favour of the appellant, the court agreed that the losses permitted by Article 287 (k) of the Tax Code only apply under the ordinary regime. Under this special regime, though still a part of income tax, the obligation to pay minimum income tax constitutes a legal presumption of profit for the taxpayer, thus eliminating any possibility for reimbursement or compensation in later years.

Also demonstrating the shift towards the purposive approach to statutory interpretation is the case of Sun Development, S.A (Melia Caribe Tropical) (appellant, hereafter Sun Development) v. the General Directorate of Internal Taxes (respondent), which involved the issue of transfer pricing and utility rates being quoted for hotel nights. The appellant sold its operations through a tour operator, a related company located in a tax haven. Article 281 of Law 11-92 states:

“ Legal acts concluded between a local company with foreign capital and a natural person or legal entity domiciled abroad which directly or indirectly controls it, will be considered, in principle, to be made between independent parties when their provisions adhere to normal market practices between independent entities....’

Doubting the veracity of the information submitted by the taxpayer, and upon checking the tariffs quoted by similar companies operating in the same conditions in the same geographic area, the DGII found evidence that despite the appellant’s

statements of very high liabilities, the use of market intermediaries for sales purposes was nothing more than 'unreported income injected through this mechanism as working capital'. Sun Development appealed the DGII's Resolution No. 257-10 Reconsideration concerning the undervaluation of company revenues, charging that adjustments to its Affidavit of Income Tax for the fiscal year 2007 were unfair, ill-founded and without legal basis. Having examined all relevant documents, the allegations of both parties, as well as an admissible expert report, the court ruled that the determination adopted by the DGII was based on evidence which allowed the administration to go from known data to unknown information. The DGII's estimation of Sun Development's tax liability did not violate any constitutional or legal provision, being as it were a course of action well within the organisation's powers under Article 2 of the Tax Code.

Research findings revealed that the interpretation of taxing statutes in the DR shows no penchant for favouring one entity (taxpayer or tax official) over the other. In some cases where there is no expressed obligation to tax or any provision outrightly prohibiting the taxpayer from devising strategies that may result in the avoidance of tax, the strict literal approach is applied, thus impacting on the Revenue in its capacity for collection enforcement. The more recent shift towards the more purposive approach to interpretation provides a lot more flexibility for the bureaucracy, as judges seek to move beyond the surface to examine the motive behind particular provisions in the various pieces of taxing legislation, i.e the remedy or remedies which the law is trying to correct.

## **9.2.4 SYSTEM OF GOVERNMENT**

### **9.2.4.1 The Executive**

Examining the issue of executive-agency relations<sup>69</sup>, one DGA senior official argued that the type of pressure brought to bear on the institution is related to the type of relationship which the President has with the General Director. Appointed directly by the President, both heads of the DGII and the DGA have very good working relations with the President. On occasions, both have made use of informal strategies to bypass the Ministry of Finance to deal directly with the President on issues for which there might have been little demonstrated support from the Finance Ministry. Particularly the DGA, staff noted that given the close relations between the President and Mr. Cocco and the respect which the former had for the head of the DGA and the department, the image of the organisation throughout the public service was not only that of an effective income generating institution, but as a liaison or route for communicating with the President. Such respect resulted in the organisations being able to proceed with the business of tax administration with minimum interference by the Executive Power.

Regarding the degree of politicisation of the staffing of the bureaucracy, Article 55 of the Dominican Constitution offers extensive powers to the President of the Republic in the incorporation and removal of officials. As head of public administration, the President appoints and removes cabinet ministers as well as other public officials and employees whose appointment is not recognised by the Constitution or by law. This includes Executive branch appointees who exercise

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<sup>69</sup> The focus here is strictly on the President as Head of the Executive.

high level administrative, managerial and consultative functions. Likewise, the Civil Service Act provides for the Chief Executive to discretionally appoint individuals to a wide range of positions, outside the normal recruiting process.

Historically, across the wider public service, the DGII and DGA being no exception, there was a great deal of political involvement in recruitment, promotion and dismissal of staff, as well as Executive involvement in operational decision-making. In the DGA, change in regime could result in as much as a 85% to 95% staff turnover. Instead of answering to the Ministry of Finance the organisation was reporting directly to the President. A 2003 survey on remuneration in the DGII showed salaries, as a norm, were not applied by the personnel department according to the position or levels of responsibility, but by the authority that requested the hiring. Despite falling under the civil service career and administrative regime which came into effect in 1991, this system failed to prevent in 2003, a high turnover of staff in the DGII whereby half of its staff had less than five years of service, and 23% less than one year.

Both the Head of the Internal Audit of the DGA, and the Director of Human Resources in the DGII noted that such politicisation was no longer the order of the day within the two organisations. The situation radically changed during the period 2004-2012 under the two Dominican Liberation Party (PLD) administrations headed by President Leonel Fernandez. According to the DGA's Internal Audit Head, 95% of the staff within the organisation at the time were part of the staffing complement during the 1996-2000 Dominican Revolutionary Party (PRD) administration. Some department heads have, as a result of the longevity of

tenure, built up between 8-25 years of work experience. In the words of the DGII's HR Manager, "whilst one cannot say that the administration is completely free of politics, what was unfolding was the establishment of a HR regime in accordance with the law". As an example of the quest for professionalisation of its staffing, a private company was contracted in 2007 to select 60 new auditors, which involved a period of training followed by an evaluation. No officials, neither inside nor outside of the organisation had any input into final selection of the candidates.

#### **9.2.4.2 The Judiciary**

Both the DGII and the DGA argue the strong and ongoing lack of support from the judiciary which is a serious cause of concern. Such concerns, which centre on the leniency of judges in dealing with tax evaders and smugglers, misapplication of the revenue laws and the illogical and illegal rulings being handed down across the entire ambit of the country, have resulted in various comments and statements in the print media.

In an article entitled "Dominican Internal Taxes alleges lack of support from Justice Branch" in the Dominican Today Newspaper, the General Director of the DGII, Mr. Juan Hernandez highlighted the failure of his department to get the necessary and proper support from the judiciary in its fight against evasion, since no legal proceedings were concluded against firms or physical persons charged for violations pertinent to tax laws. According to Hernandez:

"...the processes are very slow in the cases that we have taken before the justice system...there is too much bureaucracy in preparing legal cases...there are multiple persons that we have charged due to



different types of violations and up to this day, we have not seen the first completed proceeding' (Dominican Today, January 22<sup>nd</sup>, 2007).

Even more harsh are the views and comments of his counterpart in the DGA, who point to the complacency, as well as the general lack of knowledge and understanding of the judiciary about the tax environment and tax issues. In an article entitled "Tax dodgers and smugglers go unpunished, Customs chief says", the 'Dominican Today' reported statements made by the General Director, Mr. Cocco during a joint press conference with the Head of the Centre for Import and Investment of the Dominican Republic. According to the article, Mr. Cocco:

'...[described] himself as "impertinent" in regards to the follow up that he provides to the cases of contraband taken to court, so that "responsible and determinant sanctions against the tax evaders" are established, but lamented that that still has yet to be accomplished' (Dominican Today, August 29<sup>th</sup>, 2005).

What happens, the General Director went on further to state, is that 'there is complacency in the rulings and on the tax problem there doesn't seem to be much concern in certain spheres of Justice'. Citing one case where the importer was apprehended twice and convicted for smuggling three containers of liquor, but because of being sentenced to house arrest, was able to travel abroad and was again caught with contraband. Mr. Cocco spoke of the courts' failings to dissuade persons from becoming repeat offenders by not handing down stiffer penalties. This, despite the administration's provision of comprehensive explanations of cases accompanied by detailed explanations of the law to make the court understand the nature of the issue. The "inoperative manner" in which the

Dominican Justice operates has led to it being labeled by the DGA as “an accomplice in tax evasion” (ibid).

### **9.3 THE IMPACT OF MESO-LEVEL FACTORS ON AUTONOMY**

#### **9.3.1 ATTITUDES AND BEHAVIOURS OF CENTRAL GOVERNMENT AND OTHER GOVERNMENT INSTITUTIONS**

As previously mentioned, the environment of the focal organisations in the DR, whilst similar to that of the Jamaican revenue agencies, also exhibit a few striking differences. One of these differences lies at the task network level, and involves organisations with which the revenue departments are required to interface. Particularly at the Dominican ports of entry, a number of other organisations exist to jointly execute the task of border protection. These include the departments of National Intelligence, Army Intelligence, Navy Intelligence, Public Health, and Agriculture, as well as various environmental authorities. The strong presence of the military dates back to the DR’s lengthy period of dictatorship, which created a strong role for the military in Dominican society. Established at the various ports are ‘Verification Commissions’ made up of representatives of these various institutions, which must be present at the opening of each container.

It is at the border points that enormous pressures are brought to bear on the operations of the DGA, with the department facing constant threat to both its policy and interventional autonomy. According to the DGA’s international trade advisor:

‘At the ports of entry, each entity wants to be the main character in the movie. Right now everyone is in control and there has been known cases of confrontation with regard to jurisdiction. Teams work in theory towards the same objective, but in practice they work first to the objectives of their institution.

The strongest and most frequent threats were said to come from the military. According to customs officials interviewed stationed in these locations, despite a lack of knowledge on Customs laws and regulations, the military constantly intervenes in the operations of verification of merchandise with an attitude, to extract their own benefits. The Sub-Director of Santo Domingo Airport also spoke of the historical lack of inter-agency co-operation, which has somewhat improved over the years as a result of the conduct of regular co-ordinated high level meetings between heads of the various organisations. Jurisdictional issues are pro-actively dealt with through the DGA’s conduct of joint inter-agency training programmes in which other agencies are invited to participate.

A lack of support on the part of central institutions and other government departments is also an issue for DGII officials who spoke of the bureaucratic red tape involved in accessing vital information from other government entities such as the Property Registration department. Lack of computerisation result in the DGII having to physically visit the department to access taxpayer files which cannot be removed from the office. Officials in both departments reiterated the views of their respective Heads about the support of the Justice department. Problems lie in the delays in handling case, the lack of knowledge of personnel and poor administration resulting in loss of legal papers filed with the department.

### **9.3.2 CAPACITY OF CENTRAL GOVERNMENT AND OTHER GOVERNMENT INSTITUTIONS**

With regard to other central institutions, the departments have a high level of freedom to manoeuvre largely as a result of the lack of capacity of such entities. With more than RD\$675 billion pesos to track and audit, the external audit Accounts Chamber is woefully short of personnel and equipment. Of its request for RD\$1.1 billion in its 2007/08 budget, it was assigned only RD\$423 million, a 10% increase over the last year's budget but still short of the RD\$792 it is supposed to receive according to the law. The result is the conduct of audits which are not very detailed and comprehensive. Likewise the Office of the Comptroller General which is also limited in its capacity for internal oversight. A high level of interventional autonomy from the National Office of Administration and Personnel (ONAP) is a result of sufficient personnel skilled in areas such as the evaluation of training, as well as the evaluation and classification of personnel. The limited capacity of the central and other government institutions mentioned here is typical of the levels of capacity of the majority of entities with which the revenue organisations interface.

## **9.4 THE IMPACT OF MICRO-LEVEL FACTORS ON AUTONOMY**

### **9.4.1 INTERNAL STRUCTURES AND SYSTEMS**

With the granting of semi-autonomous status to the DGII came the mandatory requirement for the establishment of a range of new internal structures, systems, procedures and norms. A number of systems and processes that were non-

existent in both organisations prior to 2006 were implemented during the course of the next two years. As a first step in the transitory process, the departments each devised a new organisational structure that would enable realisation of the primary reform goal of achieving efficiency. According to the Sub-Director of the DGA the department conceptualised a new structure for a modern customs that would allow for the execution of best practices in customs co-operation and customs management. New departments in the reorganised structure include a department of International Relations and Negotiations, as well as a department of 'Planning and Economic Studies'. The department of International Relations and Negotiations has a dedicated function which includes liaising with a number of regional and international institutions as well as with the donor community to monitor the various training programmes on offer, as well as to actively seek out possibilities for the provision of technical and/or financial assistance. This function has therefore been removed from the regular training function where a lot of opportunities were being left untapped.

Since 2005, a formal planning programme commenced in the DGII, the DGA following suit in 2006. The whole concept of planning within the DGII assumed a high priority with the incorporation of management best practices such as the use of the Balanced Scorecard. A Planning Committee was established to oversee the institutionalisation of the planning process, and training programmes in strategic planning, strategic management and application of the Balanced Scorecard methodology rolled out across the entire organisation. Use of planning information has resulted in modifications to strategic and operational plans as appropriate to

facilitate results. According to the Sub-Director, such practices and institutional arrangements have provided the bases for better informed decision making.

Focus within the DGII on processes and procedures has also resulted in the use of integrated audits which makes use of scorecard information. A typical audit of a department or division includes a review of the expenditure of the budget, the scorecard data, as well as a review of operational processes. Also in existence are procedures manuals which are being used extensively to develop internal capacity.

Focusing on computerisation, interconnection with other institutions allows the focal organisations to access data that will provide a range of information on taxpayers. The DGA's proprietary system for customs data management, SIADOM<sup>70</sup>, connects the department with all the ports, airports and border crossings of the country (27 in total), and maintains interconnection with the DGII, the Secretariat of Agriculture, as well as with a number of Intelligence agencies.

Implementation of a number of these computerised systems and procedures was possible as a result of reduced central government dependencies and increased financial autonomy. Where in-house capacity was weak in areas such as organisation re-design and the establishment of HR regimes, both the DGII and the DGA made use of external consultants to assist in the development and implementation of systems and procedures.

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<sup>70</sup> The full Spanish title of the system is 'Sistema Informatico Aduanero Dominicano' (SIADOM).

#### **9.4.2 CONTROL OVER RESOURCES**

Prior to 2006, the DGII and the DGA faced a number of manpower, materials, training and technology constraints in their dependency relations vis-à-vis the Finance Ministry and other government entities. Capacity constraints in the DGA for example, resulted in the department having to outsource some of its legal work to external attorneys, including the preparation of cases, given a complement of only nineteen person in its legal department.

Since the granting of autonomy, the heads of both these departments have focused on computerisation as a strategy for modernisation. The DGII has rolled out a number of computers and laptops across the organisation. Each department has implemented programmes so that users of tax and customs services can conduct their activities through various web-based applications.

The extent of computerisation within the DGA includes the availability of x-ray equipment, security cameras, probes for detecting human presence, mirrors for bomb detection, closed circuit system with seventeen cameras at the Santo Domingo airport with operations filmed 24 hours a day. Use is made of a sophisticated back-up system and fibre-optic technology. The implementation of a new risk profiling system has permitted the department to move from 100% checking to selectivity checks via use of risk profiling and risk analysis. This has permitted the elimination of three checking tables at the Santo Domingo Airport as staff is now re-deployed to various other units to perform functions involving back end verification. All equipment has been bought from the budget of the DGA. In 2007, the department subscribed to a loan agreement with the Government of

South Korea to the amount \$23m. for the automation of all Customs processes. The aim is for the creation of a paperless Customs with everything available electronically 24 hours per day. Repayment for the loan will also be from the department's own resources. Both organisations have been hailed as models in Latin America - institutions well advanced in term of their levels of modernisation.

## **9.5 CONCLUSION**

This chapter presented findings on factors conditioning the exercise of bureaucratic autonomy in the Dominican case. According to the study's findings, influences operated at all three levels of the environment, micro- meso- and macro-levels, albeit with different forces. Mirroring Table 8.6, Table 9.1 summarises those influences as earlier elaborated.

At the micro-level, the revenue organisations faced serious resource constraints prior to reform. Post reform, legal autonomy to borrow and to incur debt, along with financial management autonomy to procure goods and services resulted in a marked reduction in resource constraints. Less human intervention in transaction processing as a result of the more automated work environment released manpower which was deployed to other critical areas. A heavy focus on strategic planning and strategic management, as well as emphasis on capacity building in these and other areas all provided room for greater internal organisational capacity.



Level of Environment	Influences / Factors Conditioning Autonomy	Dimension of Autonomy Affected	Nature of Affect √ / x	Comments
Institutional Environment	Interest Group Participation	• Policy autonomy	√	Institutionalisation of the practice of information sharing and involvement of stakeholders in decision making process. Also the absence of organised labour.
		• Structural autonomy	x	Additional lines of reporting to the IMF (achievement of fiscal revenue targets)
		• Interventional autonomy	x	Reporting to multiple principals. Donor conditionalities and the resulting reprogramming of national priorities having implications for bureaucratic functioning
		• Financial Autonomy (Customs Department)	√	Reduction in level of financial dependence on MoF due to substitutability of resources provided by interest group to further its interest (Container Support Initiative).
	Legal/Administrative Framework	• Policy autonomy	x	Despite amendments to revenue laws providing for better enforced compliance, policy autonomy still fettered, e.g., as a result of inability to access 3 <sup>rd</sup> party information and act on such information.
		• Interventional autonomy • HRM autonomy • Financial autonomy • Financial management autonomy	x	Revenue laws, public administration laws, as well as supranational legislation placing local institutions such as the judiciary and various central bodies, as well as international bodies such as the WTO in power positions.
		• Interventional Autonomy	√	Post-reform scaling back on the degree of ex-ante and ex-post monitoring and oversight by central institutions.
	Legal Tradition	• Policy autonomy	x	Detailed style of drafting legislation providing limited elbow room to interpret policy and to implement regulations pursuant to legislation.
		• Interventional autonomy	√	Witnessing of some movement towards purposive approach to statutory interpretation resulting in less challenges by the courts to administrative decisions.
	System of Government	• Interventional autonomy	√	Post reform (PLD administration) scaling back in levels of politicisation of top level appointments.
		• Policy autonomy • Interventional autonomy • Policy autonomy	√ x x	Greater degree of independence by bureaucrats to execute tax policy due to less politicisation. High levels of intervention in administrative decision-making by the judiciary, including reversal of decisions. Inability to effectively implement strategies and programmes to ensure compliance with tax obligations.
Technical Environment	Relations with Central Government and other Government Institutions	• Interventional autonomy	x	Most threat to autonomy as a result of military interference. Undermining of the Revenue to implement at will enforcement strategies.
	Capacity of the Centre and of other Government Institutions	• HRM Autonomy • Interventional autonomy	√ √	Limited capacity for monitoring and evaluation by entities charged e.g. with oversight of HRM functions. Enlarged scope to make decisions free of external input.

<b>Organisational Environment</b>	Internal Structures and Systems	<ul style="list-style-type: none"> <li>• Policy autonomy</li> </ul>	√	New organic structures and the application of planning and monitoring systems better positioned the revenue agencies to be more responsive administrations
	Resource Availability	<ul style="list-style-type: none"> <li>• HRM autonomy</li> <li>• Policy Autonomy</li> </ul>	√	Post reform enhanced physical resource availability freeing up human resources to deploy to more critical areas and areas suffering manpower shortages Increased organisational capacity with which to implement policies and programmes.

Table 9.1: Summary of Influences on the Practice of Autonomy at the 3 levels of Environment

At the task network meso level of bureaucratic functioning, both organisations were able to boast vertical and horizontal support linkages with the parent Finance Ministry and a number of other government departments. Other flexibilities, for example freedom from encroachment on delegated human resources management autonomy, were afforded as a result of the general lack of capacity of some central institutions and other departments with which the focal organisations interfaced. Constraints at this technical environment level stemmed primarily from difficulties in accessing vital taxpayer information from third parties for use in making informed decisions on the most efficient and effective means to implement tax policy, as well as from strained relations with the military, as in the case of the DGA.

At the broader institutional level, whilst enhanced room for manoeuvre resulted from opportunities presented through the absence of organised labour within the revenue agencies, and from the latitude granted by the Presidency to grow staff professionally, a number of constraints fettered the practice of interventional, structural, financial and policy autonomy. The strict conditionalities attached to the DR's 2005 Standby Agreement with the IMF led to the subsequent inclusion of the

Fund amongst the list of multiple principals to whom the Revenue was required to report on a frequent basis. Revised governance arrangements were to impact on the organisations' structural, interventional and policy autonomy with respect to involvement in the setting of quantitative revenue targets. Other governance arrangements which mandated the recognition of external supranational legislation on trade and commerce in supersession of national laws also posed a threat to bureaucratic decision making. Freedoms of the DGA to devise its own ways and means of safeguarding national revenues and protecting intellectual property rights were restricted on account of WTO rules on valuation and intellectual property rights (IPR).

Equally constraining was the attitude and behaviour of the judiciary, as well as the administrative framework within which the organisations operate. The Revenue's assessment of the timeliness, logic and legality of judicial rulings resulted in a characterisation of the behaviour of the judiciary as nothing short of adversarial. Repeated resort to use of punishments that made a mockery of the judicial system seriously and negatively impacted on interventional and policy autonomy. Prior to tax administrative reforms, revenue operations were performed under a plethora of central rules and guidelines, with a number of central institutions monitoring and overseeing financial and non-financial transactions both before and after their performance. The organisations found it difficult to break free from a majority of these constraints. Formal release of a number of constraints post reform gave true meaning to the concept of bureaucratic functioning at arms length of central government controls. Research findings showed that relative to

the other levels of environment, the institutional environment of tax administration played a more critical role in terms of opportunities for action and threats to the practice of administrative discretion.

In the following final chapter, a more detailed comparative analysis of the two cases is undertaken. Guided by the frameworks devised and applied throughout the study, answers to the questions posed at the beginning of the study are afforded more detailed responses.

## **CHAPTER 10**

### **COMPARATIVE ANALYSIS AND DISCUSSION**

#### **10.1 INTRODUCTION**

The thesis now turns to a detailed comparative analysis of research findings on the matters investigated in the two case studies. Discussion continues to be guided by the framing of the research questions as well as the study's theoretical frameworks. Following the comparative analysis and just before the study finally concludes, a few thoughts are presented on potential areas for future empirical work.

#### **10.2 RATIONALE UNDERLYING FISCAL ADMINISTRATIVE REFORMS**

The value proposition or *raison d'être* for fiscal administrative (tax and customs) reforms vary extensively across jurisdictions, with institutional and political factors helping to explain the differing trajectories or paths chosen for implementation. Comparing the two cases, there existed a number of similarities and differences surrounding the reasons for reform.

Both countries were faced with an inefficient and unworkable system of tax administration that neither coped adequately with changing macro-economic circumstances nor yielded adequate revenues, thus warranting the need for a prompt reversal of the situation. Jamaica's TaxARP programme unfolded against a backdrop of macro-economic problems, sustained poor revenue performance,

poor levels of voluntary compliance and a limited capacity for tax collection. Likewise in the DR, economic liberalisation and the giving way of the traditional gatekeeper role of Customs to the concept of trade facilitation demanded drastic changes in the conduct of business with regard to international trade and domestic resource mobilisation.

Faced with an equal urgent need for change, the cases however differed in their foci of attention. In Jamaica, the combined quest for improved efficiency, effectiveness and to some extent reduced levels of corruption (in the case of the Customs department) was aimed at reducing the amount of duplication of effort within the tax system; enhancing integration to increase the capacity of the tax administration for compliance enforcement; and most importantly, improving overall revenue yield. Unlike Jamaica, it was efficiency which stood at the forefront of thinking of the Dominican authorities. Immersed in a process of commercial integration and market liberalisation and faced with the changing demands of a more open economy, important reforms were needed that would spur investment and facilitate business activities with major trading partners. Foreseen loss of revenues from international trade raised the profile of domestic resource mobilisation and by extension the requirement for increased efficiency and effectiveness in the administration of domestic taxes. For the DR, therefore change was about being more responsive to customer needs and the ability to be flexible to devise products and services that would result in improved service delivery. Findings on the reasons for change are therefore consistent with the rationale espoused by the New Public Management approach to reform, namely improved service delivery as well as improved performance through increased efficiency and effectiveness.

Notwithstanding the why of reforms, also at issue was the how, i.e. the manner of implementation. In both cases, choices were largely intuitive, based mostly on the advice of external experts - best practices as espoused by international donors (the World Bank in the case of Jamaica, and the IMF in the case of the DR) - rather than on a cost-benefit analysis or formal assessment of whether the performance gains being sought could have been achieved through reforms along others lines at variant with the NPM approach.

Institutional choice needs to be examined not only in light of macroeconomic issues but also within the context of the political environment and the extent to which entities in the international and local political arena were able to influence reform decisions. Jamaica was able to escape donor pressures due to the GoJ's relative strong control over the internal management of its affairs relative to its dependency relation with donors during the 1970s and 1980s. Reform was therefore the product not of foreign ideas as such, but of the pragmatic application of such ideas. It was the result of Jamaicans thinking about their own problems and their selection of what they deemed to be a judicious balancing of theoretical desirability and practical feasibility. Unlike her neighbouring sister, the DR's inability to escape such donor pressures stemmed from the country's historical weak position of power and strong dependency relation vis-à-vis the IMF which limited freedom of choice in terms of reform options.

### 10.3 NATURE AND EXTENT OF BUREAUCRATIC AUTONOMY IN PRACTICE

Table 10.1 is a comparative analysis of the relative degrees of formal and informal autonomy granted to and exercised by the four focal organisations within the two cases, as separately presented in Chapters 6 and 7.

DIMENSIONS OF AUTONOMY	MEASUREMENT	JAMAICA				DOMINICAN REPUBLIC			
		PRE-REFORM Y/N		POST-REFORM Y/N		PRE-REFORM Y/N		POST-REFORM Y/N	
		CD	IRD	CD	IRD	DGA	DGH	DGA	DGH
LEGAL	Established by specific law?	-	-	√	√	-	-	√	√
	Separate legal status?	x	x	x	x	x	x	√	√
	Own patrimony?	x	x	x	x	x	x	√	√
STRUCTURAL	Board of Directors Model?	√	√	x	x	x	x	√	√
POLICY	Ability to select policy instruments and (sub-)processes for achievement of fiscal objectives?	√	√	√	√	√	√	√	√
FINANCIAL	Funding as a % of collection?	x	x	x	x	x	x	√	√
	Automatic release of funds?	x	x	x	x	x	x	√	√
	Ability to extend funding?	x	x	√	x	√	√	√	√
FINANCIAL MANAGEMENT	Budget flexibility?	x	x	x	x	x	x	√	√
	Authority to procure goods and services?	√	√	√	√	√	√	√	√
	Ability to manage/dispose of assets?	x	x	x	x	√	√	√	√
STRATEGIC HRM	Authority to set levels of remuneration?	x	x	x	x	√	√	√	√
	Ability to determine policy on: recruitment, promotion, performance management?	x	x	x	x	√	√	√	√
OPERATIONAL HRM	Ability to recruit and select staff?	x	x	√	√	√	√	√	√
	Authority to pay salaries?	x	x	x	x	√	√	√	√
	Ability to appraise individual performance?	√	√	√	√	√	√	√	√
	Authority to build capacity through training and development?	x	x	√	√	√	√	√	√
	Ability to discipline staff?	x	x	√	√	√	√	√	√
	Authority to terminate employment?	x	x	√	√	√	√	√	√
INTERVENTIONAL	Ability to influence setting of performance standards (quantitative revenue targets)?	x	x	√	√	√	√	√	√
	Performance monitoring and measurement by external principal?	√	√	√	√	√	√	√	√
	Application of sanctions for non-performance?	x	x	x	x	x	x	x	x
	Performance subject to internal and external audit?	√	√	√	√	√	√	√	√

Table 10.1: Comparative Analysis of Relative Autonomy of the Revenue Administrations in Jamaica and the Dominican Republic



Figure 10.1 is a graphic representation of the same information. Despite the qualitative nature of the study, an attempt was made to come up with a statistical figure, on a scale of 0-10, which would provide some indication of the extent of autonomy practiced along the various dimensions. This representation is therefore only indicative.

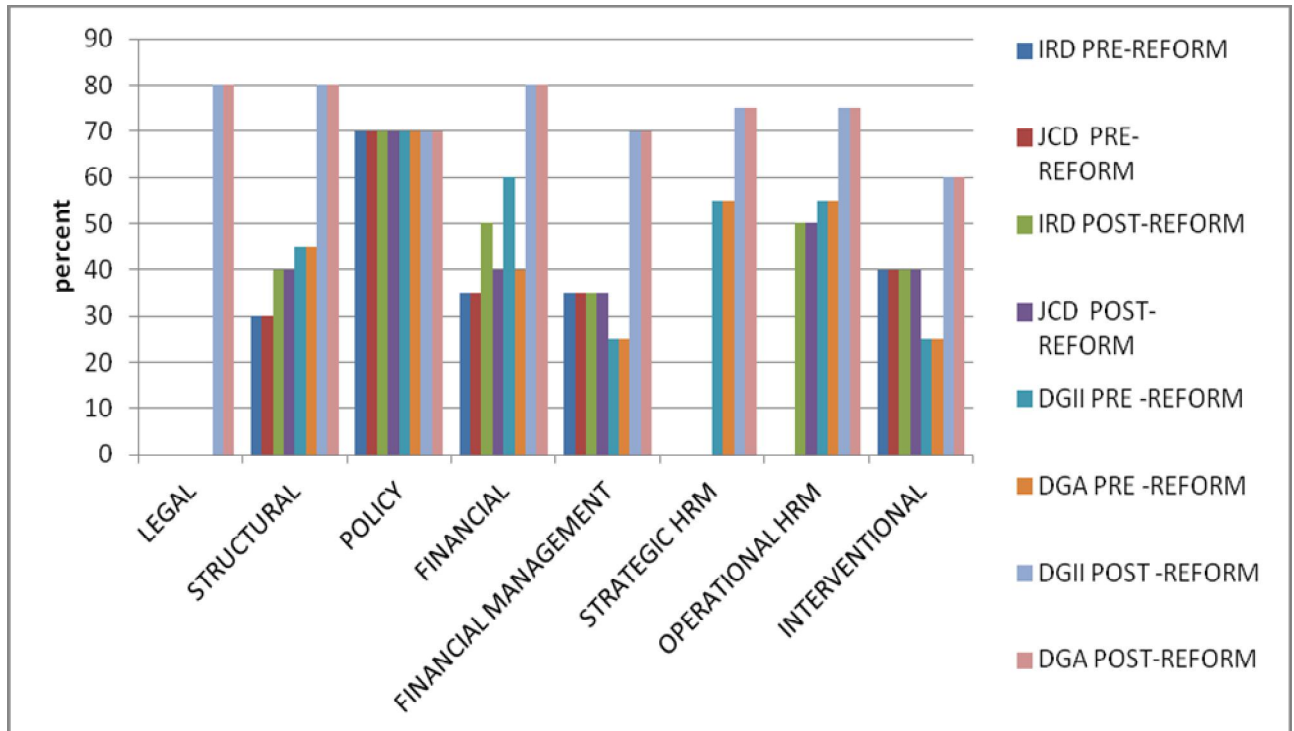


Figure 10.1: Comparing the Relative Autonomy of the Revenue Administrations in Jamaica and the Dominican Republic – A Graphic Illustration

The governments of Jamaica and the Dominican Republic took decisions, in 1999 and 2006 respectively, to undertake administrative reforms of their revenue agencies. Use was made of totally different institutional forms for the achievement of fiscal goals and objectives. In Jamaica, revenue agencies, including the two focal organisations, were all brought together under one roof similar to the type of

structural arrangement for the typical semi-autonomous revenue authority. Because of the umbrella-type configuration, the Jamaica Tax administration is therefore often described as a semi-autonomous institution. However, when examining its legal status the entity was never far removed pre- or post-reform from the centre of government. The Inland Revenue Department (IRD) and the Customs Department (CD) had no formal legal basis outside its parent Finance Ministry of Finance. This situation paled in comparison to the Dominican case. Formal arms length distancing of the Internal Taxes Department (DGII) and the Customs Department (DGA) from the centre through the passage of legislation granting formal autonomy along five different fronts, including the ability to be sued in their own right and to dispose of assets, was in stark contrast to pre-reform legal ties to the centre.

Structurally, in the Jamaican model, instead of the new governance arrangements distancing the Revenue from the centre, lack of meaningful authority to the Director General (DG) and lack of empowerment of the Office of the DG resulted in maintenance of the status quo as far as authority and accountability in matters involving revenue administration. In the Dominican case, post-reform governance arrangements replaced the originally conceptualised fully empowered internal Board of Directors with an internal advisory Council reporting to an external Higher Council of Tax Administration, albeit still allowing for a large degree of structural autonomy from the Finance Ministry. Arms length distancing of the revenue agencies might have been the result of the confidence which

policymakers placed in these institutions to implement tax policy without threats to authority or political accountability.

Regarding financial autonomy, the sole source of income prior to reform, in both cases, was through government appropriations. Only the Customs departments were in a position to extend funding via the charging of user fees. Cost cutting continued to be a major issue, with established budgetary ceilings and reductions being made in the run-up to final approved allocations. Lack of necessary funds resulted in cutbacks in spending, as well as modifications to the scope and timing of commencement of various programmes. Post-reform, the situation remained largely unaltered for the Jamaican agencies. In the DR, however, steady automatic income derived from a percentage of collection funding and the concomitant reduction in financial resource dependency not only facilitated a marked turnaround in resource availability, the DGII and DGA used their financially autonomous status to undertake various programmes and strategies to efficiently and effectively implement tax policy.

Focusing on policy autonomy, this was one area where the Revenue, in both countries, exercised a large amount of informal freedoms. Whilst in Jamaica, however, autonomy along this dimension was never formalised, in the DR, the 2006 autonomy laws codified the previous informal arrangements. Analysing the reason for the granting of such informal discretion, this author posits the case of agency theory and informational asymmetry. Regarding technical customs issues of trade facilitation, risk profiling and risk management, intelligence analysis, and enforcement, bureaucrats are *moiré* likely to know more than elected officials and

policymakers about what needs to be done and how to do it. Even if the latter do not explicitly delegate such authority, bureaucrats' greater information, theoretical understanding and operating expertise may give them greater scope for independent action.

Regarding financial management autonomy, the four revenue agencies, pre-reform, were subject to a rigid set of controls. A high degree of formalism existed, with a number of central organisations providing ex ante and ex post controls. A large number of centralised rules and regulations also governed the spending of government funds. In Jamaica, flexibilities in the procurement of goods and services were utilised more so by the Customs than the Inland Revenue Department. In the case of the DR, heavy centralised controls on financial expenditure were to a large extent relinquished post-2006, with the granting of financial management autonomy. The ability to pay at will for goods and services without the need for checks by and clearances from various central institutions seemed critical to goal achievement.

In the area of human resources management, the two cases differed in the amount of formally delegated freedoms and the practice of administrative discretion. In Jamaica, whilst the formal delegation in 2002 of certain HR functions afforded the Revenue a number of flexibilities with respect to operational HRM, the strategic management of HR still continued to be the sole preserve of central government institutions. Whilst good use was made of operational HR freedoms to recruit and select staff, to develop internal capacity, and to devise and implement performance management systems, the lack of ability to devise an

appropriate job classification system, to create posts and to determine pay levels seriously crippled the achievement of strategic HRM objectives.

Research findings showed, however, the ability of both Jamaican institutions to break free of some their constraints. The agencies engaged in informal (and sometimes illegal) behaviours such as exceeding establishment levels, borrowing posts from one area to use in another area in the organisations, as well as paying honoraria to boost the salaries of lower paid staff.

Contrary to their Jamaican counterparts, revenue agencies in the DR exercised a high level of factual, albeit informal strategic and operational HRM prior to reform. Autonomisation only served to formalise previously existing informal arrangements. HRM autonomy led to a number of positive outcomes such as sustained near optimal manpower levels as a result of the timely recruitment of personnel, as well as higher levels of staff retention in a number of competitive positions due to pay rates near comparable to private sector market rates.

Focusing on interventional autonomy, the tax and customs agencies in both jurisdictions were subjected pre-reforms to a great deal of reporting requirements, as well as internal and external audits of their performance along both quantitative and qualitative measures. Whilst this situation continued post-reform in the Jamaican case, the Dominican revenue agencies witnessed a relaxing of such controls post-reforms. Front end checking and re-checking would now move back end monitoring and supervision by fewer central institutions.

Having analysed and compared the nature and extent of autonomy as practiced both within and across the two cases, study findings also permitted a response to the question of the relative importance of the various autonomy dimensions. Evidence pointed to financial, financial management and human resources management autonomy being the linchpins to successful reforms. Where freedoms in these areas were in short supply, the organisations were pitted in strong dependency relationships with relatively weak positions of power vis-à-vis central institutions, given the lack of alternate sources for substitution of critical resource needs. Such freedoms, when in existence, permitted the organisations to forge ahead, unimpeded with their plans and programmes, given the availability income, personnel and authority over expenditure.

Despite the explicit rationale provided and the results sought, one can safely argue that tax and customs administrative reform in Jamaica went totally against the grain of New Public Management (NPM) dictates of transformational change through the creation of decentralised, autonomous bodies unencumbered by imposed central constraints. Limited attempts at true liberation of managers from the pre-reform rules-based, process driven style of bureaucracy, leads one to fairly conclude that what transpired in Jamaica in terms of decentralisation of revenue administration and the modicum of freedoms granted to the Revenue was in essence a mere tinkering with the idea of reform along NPM lines. Tax administrative reform in the DR, on the other hand, can be described as substantial in the sense of the discretionary space granted for the efficient and effective implementation of tax policy. Reforms, albeit brought about and

monitored under fairly extreme pressures, were to represent a sharp break with the past situation.

#### 10.4 INFLUENCES ON THE PRACTICE OF BUREAUCRATIC AUTONOMY

Examination of influences on the practice of autonomy reveals a complex mixture of constraints and opportunities for action at all three levels of environment, as identified in the study's theoretical framework. Table 10.2 presents a comparative analysis of the two cases.

FACTORS CONDITIONING THE PRACTICE OF AUTONOMY		MEASURE	JAMAICA	DOMINICAN REPUBLIC
MACRO- INSTITUTIONAL ENVIRONMENT	INTEREST GROUP PARTICIPATION	External pressure brought to bear on administrative functioning?	Medium	High
	LEGAL/ADMINISTRATIVE FRAMEWORK	Adequate enforcement powers in revenue laws for effective enforcement?	Medium	Medium
		Conflicting provisions in domestic non-tax legislation?	Medium	Medium
		Continued application of central laws and guidelines?	High	Medium
	LEGAL TRADITION	Legislation drafted in detailed specific manner?	High	High
		Strict literal approach to statutory interpretation?	Low	Medium
	SYSTEM OF GOVERNMENT	Supportive Executive?	High	High
		High level of politicization of the bureaucracy?	Low/Medium	Medium
		Supportive Judiciary?	Low (RM) High (RC)	Low
		Judiciary knowledgeable in tax matters?	Low (RM) High (RC)	Medium
		Existence of special revenue/tax court?	High	Medium
MESO TASK NETWORK ENVIRONMENT	ATTITUDES OF CENTRAL GOVERNMENT & OTHER INSTITUTIONS	Level of support for the revenue departments (Central government and other institutions)	Medium	Low
	CAPACITY OF CENTRAL GOVERNMENT & OTHER INSTITUTIONS	Level of capacity of central government and other institutions (monitoring and oversight of the revenue agencies)	Low	Low
MICRO INTERNAL ORGANISATIONAL NETWORK	INTERNAL STRUCTURES & SYSTEMS	Appropriateness of structure for policy implementation	Low	High
		Existence of proper Planning and Management Information, Financial Management Systems	Low	High
	CONTROL OVER RESOURCES	Degree of control over resources?	Low	High

Table 10.2: Comparative Analysis of Factors Conditioning the Practice of Autonomy  
in the Revenue Administrations

Figure 10.2 is a graphic illustration of the findings.

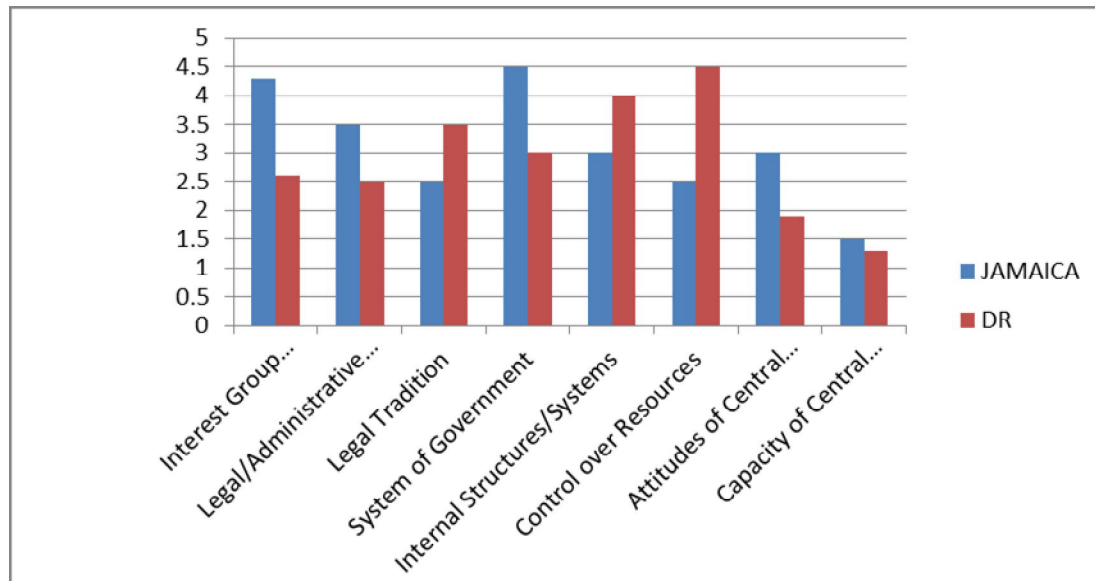


Figure 10.2: Comparing Influences on the Practice of Autonomy in the Revenue Administrations  
in Jamaica and the Dominican Republic – A Graphic Illustration

A discussion now ensues under the three respective headings.

#### 10.4.1 INFLUENCES AT THE ORGANISATIONAL ENVIRONMENT LEVEL

Factors in the internal organisational environment of the revenue administrations served, in both cases, to condition the exercise of bureaucratic autonomy. Prior to reforms, the organic structures which existed offered little of the flexibilities needed for the operation of responsive institutions. In the case of the DR, reformed structures and governance arrangements resulted in the establishment of institutions better poised to deal with 21<sup>st</sup> century challenges facing tax and customs administrations.



Pre-reform, all four agencies struggled to grapple with the institutionalisation of concepts such as strategic planning, the introduction and implementation of strategic plans, as well as the introduction of management information systems. Lack of capacity for planning within Jamaican institutions resulted in their inability to gather information to be used as the basis for informed decision-making on compliance and enforcement issues and the devising of strategies to address such issues. The Dominican administrations countered its lack of capacity in these areas by engaging the services of external consultants to develop the necessary structures and systems that would aid in autonomous decision-making.

Internally, resource dependency on other government entities due to a lack of financial and financial management autonomy proved a major issue for all four agencies. The Revenue lacked the necessary financial, human resource and physical resources with which to effectively execute programmes. With the 2006 autonomisation of the DR revenue agencies, financial autonomy provided the opportunity for the timely procurement of goods and services, and the timely recruitment of the right personnel to fill critical roles.

Constraints within the internal organisational environment impacted in a large way on the overall capacity of the organisations to achieve performance goals and objectives. Whilst in Jamaica, the Revenue continued to suffer from heavy resource dependency, post 2006, the overall capacity of the two DR agencies for revenue administration was strengthened due to more readily available resources, a more appropriate organic structure and the application of planning and management systems. In both cases, it must be noted the efforts made at building

capacity through networking and the drawing on regional and international institutions in the tax and customs arena to access technical and financial assistance.

#### **10.4.2 INFLUENCES AT THE TECHNICAL ENVIRONMENT LEVEL**

The task network or technical environment within which the revenue agencies operated moreso supported discretionary behaviours than constrained action. In both cases, the parent Ministries of Finance generally made no attempts at micromanagement through interferences in operational decision making. In the Jamaican case, however, there was evidence on more than one occasion of the Ministry's intervention in programme implementation when it appeared the need for a more firm steering towards meeting quantitative revenue collection targets.

Understanding and appreciation of interdependencies resulted in a high level of collaboration between the revenue agencies and the institutions with which they were required to interface on an ongoing basis. In Jamaica, threats to policy and interventional autonomy at the technical environment level filtered down from constraints imposed by the administrative framework and the central rules and guidelines that existed in the broader institutional environment. Where, for example, government agencies were required to collect user fees or were constrained by rules regarding access to and the manner of provision information, organisations worked with the Revenue to find ways to circumvent such constraints.

In the DR, it was the Customs mostly whose autonomy was seriously undermined at the border by military personnel. The pervasiveness of tradition and the Dominican culture of military dominance was therefore evident in this respect. Ways and means were actively being sought to establish and clarify jurisdictional lines of authority and accountabilities at these strategic border points.

In both cases, the capacity constraints of a number of central agencies charged with monitoring and oversight provided opportunities for independent action. Key support and control agencies lacked the technical knowledge, personnel, and/or available time, and in so doing positively impacted on bureaucratic functioning by permitting greater interventional autonomy to proceed unimpeded with the task of policy implementation.

#### **10.4.3 INFLUENCES AT THE INSTITUTIONAL ENVIRONMENT LEVEL**

In both case studies, a number of factors at the broader macro-institutional level served to influence the actual practice of autonomy. With respect to interest group participation, the Jamaican organisations were sturdily planted within an environment of strong organized interests yet were able to gain useful allies, for example with the public sector unions. Real pressures and threats to already limited financial management autonomy and operational human resources management autonomy came as a result of the corporatist arrangement between the GoJ and the union to broad macro-economic problems. The government's relative measure of autonomy from international donor agencies and its resulting ability to exercise a great deal of control over the management of its economic affairs facilitated the eventual move away from top down imposition of quantitative

revenue collection targets to consultations with the tax and customs administrations during the target setting process.

In the DR, the non-existence of organised labour within the two revenue departments, coupled with a spirit and an institutionalised practice of ongoing consultations with stakeholders resulted in limited threats to interventional and HRM autonomy. It was the DR's subordination to an external interest that constituted a powerful force in its internal politics which placed serious constraints on bureaucratic functioning. External pressures and the indelible mark left on tax administration by the IMF was clearly visible in its impact on lower level internal operational decision making on key issues of structural organisation, the identification of tax collection priorities, and the establishment of quantitative revenue targets.

Both cases suffered a similar fate with respect to the influence of the legal/administrative framework on the practice of autonomy, though the DR's reform of its administrative framework provided bureaucrats with a lot more elbow room for manoeuvre in key areas such as financial management.

In both cases, tax legislation provided bureaucrats with a fair degree of flexibilities for the exercise of policy autonomy. Particularly in the case of Jamaica, conditions set by the World Bank donor resulted in particular attention being paid to the issue of modifications to the legal framework and laws surrounding tax administration during the design phase of TaxARP. It was moreover non-tax laws relating to access to third-party information which impacted on the structural and

interventional autonomy of bureaucrats in both jurisdictions, and which created a certain measure of dependency on external institutions to assist in building profiles of taxpayers.

Over and above constraints imposed by non-tax laws are the conditioning effects that result from supranational laws superimposed on top of national legislation. The World Trade Organisation (WTO), as an independent rule-setting organisation on trade-related matters, has played an important role in Customs administration, particularly in the two cases, in generating institutional paths that have altered the local rules of the game. Forced to abide by WTO rules on trade facilitation and standards relating to the free flow of goods throughout the supply chain, the customs departments in Jamaica and the DR were hamstrung in making their own determinations in the clearance of suspect under-valued goods.

Turning to the administrative framework, this is one area where the Revenue faced serious constraints that impacted on several dimensions of autonomous working. In Jamaica, both pre- and post reform, a high degree of formalism resulting from a complex overlay of centralised structures and rules characterised bureaucratic functioning. Constraints resulting from central rules and guidelines impacted on the exercise of policy, financial management, human resources management, and interventional autonomy. It was a method of steering which carried over, to a large degree, beyond TaxARP reforms.

Likewise, to some extent, the situation with the Dominican revenue agencies. Autonomy was fettered as a result of an apparent penchant for hyperformalism and the labyrinth complexity of rules and regulations, over and beyond those

which existed in the Jamaican case. Only after more wholehearted efforts at real delegation and the relinquishing of a number of pre-reform centralised controls did the DGII and the DGA gain some respite from such constraints.

Looking at the type of pre-colonial administrative cultures that existed in both jurisdictions<sup>71</sup>, and examining findings on administrative frameworks existing at the time, it would be fair to argue, particularly in the Jamaican case, that administrative cultures and behaviours traceable to the colonial past have demonstrated great tenacity which have served to negatively impact on the practice of autonomy. Worth noting, however, is that despite such constraints, bureaucrats have sought and found ways and means of escaping the clutches or iron cage of central controls. Research findings therefore support the argument that bureaucracies are not passive recipients of pressures and constraints imposed by environmental factors but instead can exercise human agency in administrative functioning.

Analysing the impact of legal tradition, findings in both cases resulted in a null hypothesis. Examination of the style of legal drafting within the two jurisdictions showed a penchant for ‘fussy’ detailed legislation which allowed for certainty and predictability in tax and customs laws. The high level of detail clearly specifying administrative procedures to be followed by tax and customs officials, as well as taxpayers’ rights and responsibilities, leave little room for blanks to be filled in by bureaucrats. The rationale for detailed drafting might be a result of the specific policy area and the category of persons being regulated. The move in both

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<sup>71</sup> See Chapter 1 for the discussion on the administrative cultures of Jamaica and the Dominican Republic.

jurisdictions from the strict literal to a more purposive approach to statutory interpretation does not necessarily favour one party over the other. Whilst the findings in this study do not support the advanced hypothesis that different legal traditions are likely to impact differently on the ability of the bureaucracy to exercise administrative discretion, caution must be exercised in the interpretation of such results. Findings may have unearthed what may be an indirect as opposed to direct relationship between traditionalism and autonomy, suggesting the need to explore, for example, the effect of intervening factors such as the policy sector or policy area.

In terms of the differing impact of systems of government (presidential vs. parliamentary) on the practice of autonomy and the type of bureaucracies which these different regimes would wish to have in operation, study findings revealed that in both jurisdictions, the search was for professional bureaucracies staffed at the top by personnel recruited largely on the basis of merit. In the DR, whilst the absence of a fully functional Civil Service and Career Law resulted in a lack of control over employee job protection, the commitment of the Executive to reversing the traditional deleterious employment practice of use of the spoil system and politicisation of the civil service made way for the growth of a professional cadre of top leaders with a wealth of technical knowledge and expertise in tax and customs administration.

Focusing on the judiciary and its potential impact on bureaucratic functioning, this arm of government exerted its own influences on bureaucratic functioning. In the DR, actions of the judiciary severely hamstrung bureaucrats in the exercise of

policy and interventional autonomy. The Revenue accused this institution of blatantly undermining its efforts at ensuring taxpayer compliance with revenue laws and its disregard for the centrality of value of tax administration in terms of its contribution to sustainable economic development. Whilst somewhat similar sentiments were felt by Jamaican counterparts in terms of the attitudes and behaviours of magistrates in the lower level Resident Magistrates Court, revenue agencies felt a greater sense of empowerment based on their experiences in the higher level specialised Revenue Court where the capacity for adjudicating tax cases was higher and where judges possessed a great deal of knowledge and experience in tax matters as mandated for their recruitment under the 1972 Judicature (Revenue Court) Act.

Overall findings on influences on the practice of bureaucratic autonomy showed that administrative discretion was conditioned by a majority of factors posited at the three levels of environment. The study showed that notwithstanding the historical and cultural differences between the Hispanic and Anglophone cases, certain structural similarities led to some common functional realities. In both cases, findings support the hypothesis that factors within the broader macro-institutional environment, more so than those within the immediate organisational or task network environment serve to condition levels of bureaucratic autonomy.

Whilst the exercise of human agency to tap existing networks and to forge new partnerships helped to alleviate several constraints felt at the internal organisation and task network levels, the revenue agencies struggled in their attempts to break



free of the more formidable constraints faced within the institutional environment, in particular constraints imposed as a result of the legal/administrative framework.

## **10.5 FUTURE RESEARCH DIRECTIONS**

By examining the cases of two seemingly distinct Caribbean countries, Jamaica and the Dominican Republic, the main goal of the study was to enhance understanding of the factors which serve to condition autonomy within tax bureaucracies. The restriction of this study to a small number of cases means that the results of the dual pair-wise comparison are more suggestive than definitive. Findings are also contextualised within the fiscal revenue administration setting where the fieldwork was conducted. In light of such, this author posits that future research directions could either aim towards increasing the application of current findings, or toward building on the results of the study.

In the first instance, this small-n study could be viewed as the first preliminary stage of analysis; and statistical, quantitative analysis used as the second stage of research, whereby the factors analysed here are tested in a large-n sample as appropriate. Other work could also make use of the study's theoretical framework to examine other factors conditioning the exercise of autonomy not explored here, such as leadership, organisational culture and the broader system of education.

The research argues the greater relative importance of financial, financial management and human resources management autonomy to bureaucratic functioning. Future studies could seek to bear out and add weight to this finding since at this stage such result is by no means being offered as concrete evidence.

This research also suggests that the reluctance on the part of some policymakers and central authorities to delegate certain forms of autonomy was in large part due to the nature of the task being undertaken by the revenue agencies – primarily that of revenue collection. Note however, that organisations are not monolithic structures that undertake one single function, but perform a range of sub-tasks for goal accomplishment. Revenue agencies engage in varied tasks such as revenue collection, trade facilitation, compliance and enforcement. Again building on this study, the revenue agency could be deconstructed according to its various functional areas as part of an empirical analysis which seeks to examine the influence of task-related variables, e.g. visibility, measurability and political salience on the exercise of bureaucratic discretion.

## **10.6 CONCLUSION**

Autonomy and the importance of its acquisition have continued to be a vital issue within public administrative functioning. This thesis focused on the doctrine of autonomous bureaucratic functioning; questioning the nature and extent of autonomy, influences on the practice of administrative discretion, as well as the impact of legal tradition and system of government on discretionary decision making. The study involved a comparative analysis of conditions under which autonomy is likely to become a workable arrangement, or put differently, what needs to happen in order for the apparatus to working relatively smoothly, i.e. for results achieved to match quite well with results desired.

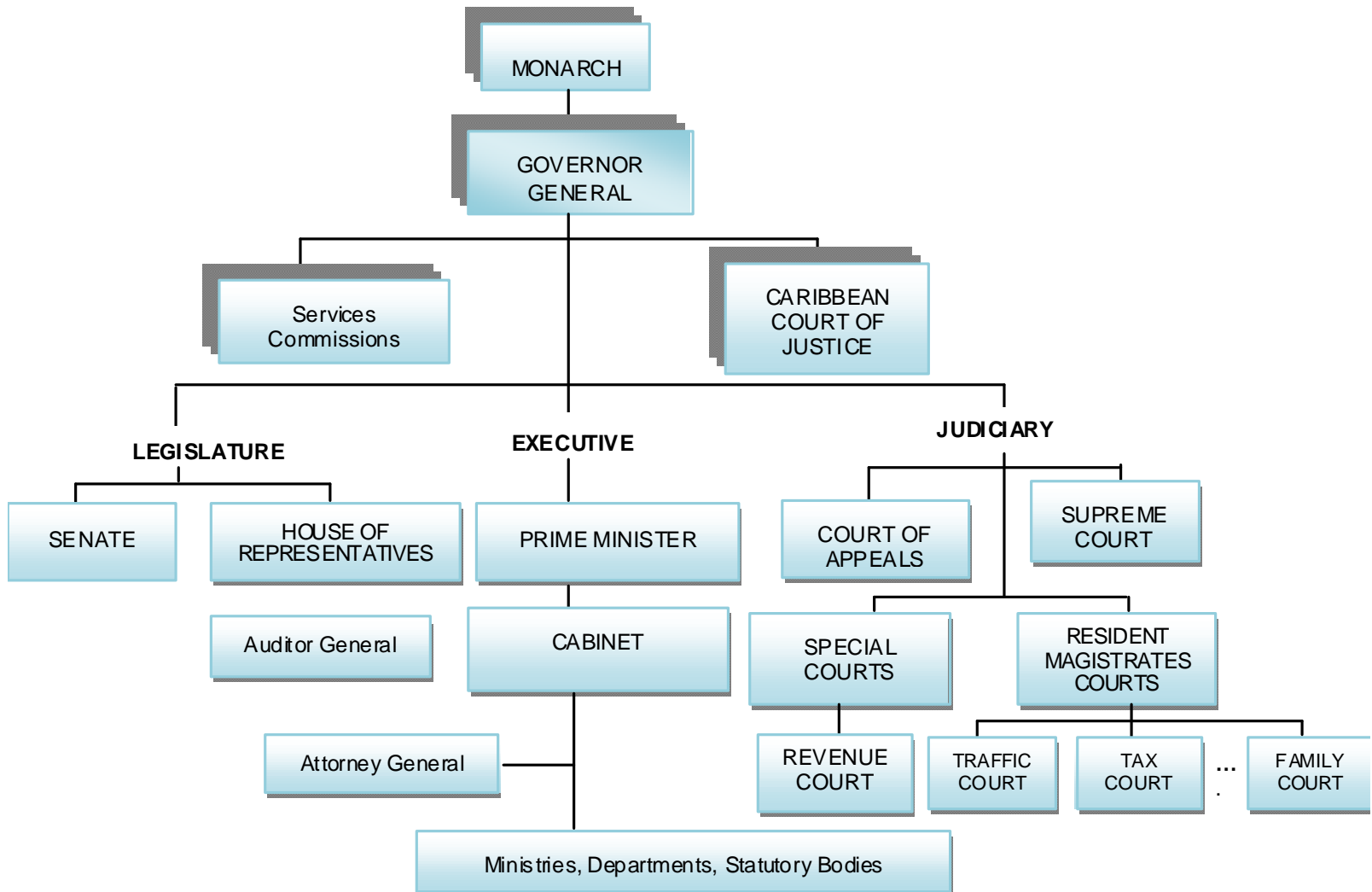
Case study findings showed that the achievement of flexible, autonomous bureaucracies must involve a number of actions by policymakers. This includes actions which need to be taken 'inside of the box', such as making it possible for changes to occur in organisational structuring, systems and processes, as well as organisational resource availability. Whilst these 'inside bureaucracy' actions are imperative, they are only a small part of the ... Actions also need to be taken 'outside of the box' that includes, for example, a review of legislation and governance arrangements, changes to inefficient public sector-wide institutional arrangements, as well as developing the capacity of the judiciary to deal with revenue cases.

One major observation from the comparative study is that one cannot easily infer from administrative reform programmes and formal structures to implementation and practice. The delicate equilibrium between bureaucratic autonomy and political control is no easy and straightforward feat to be accomplished. Particular challenges seem to be embedded in the autonomisation of revenue agencies which collects large sums of money which serve to finance public expenditure. The study showed that reality is far more complex than the reality of the practitioner model.

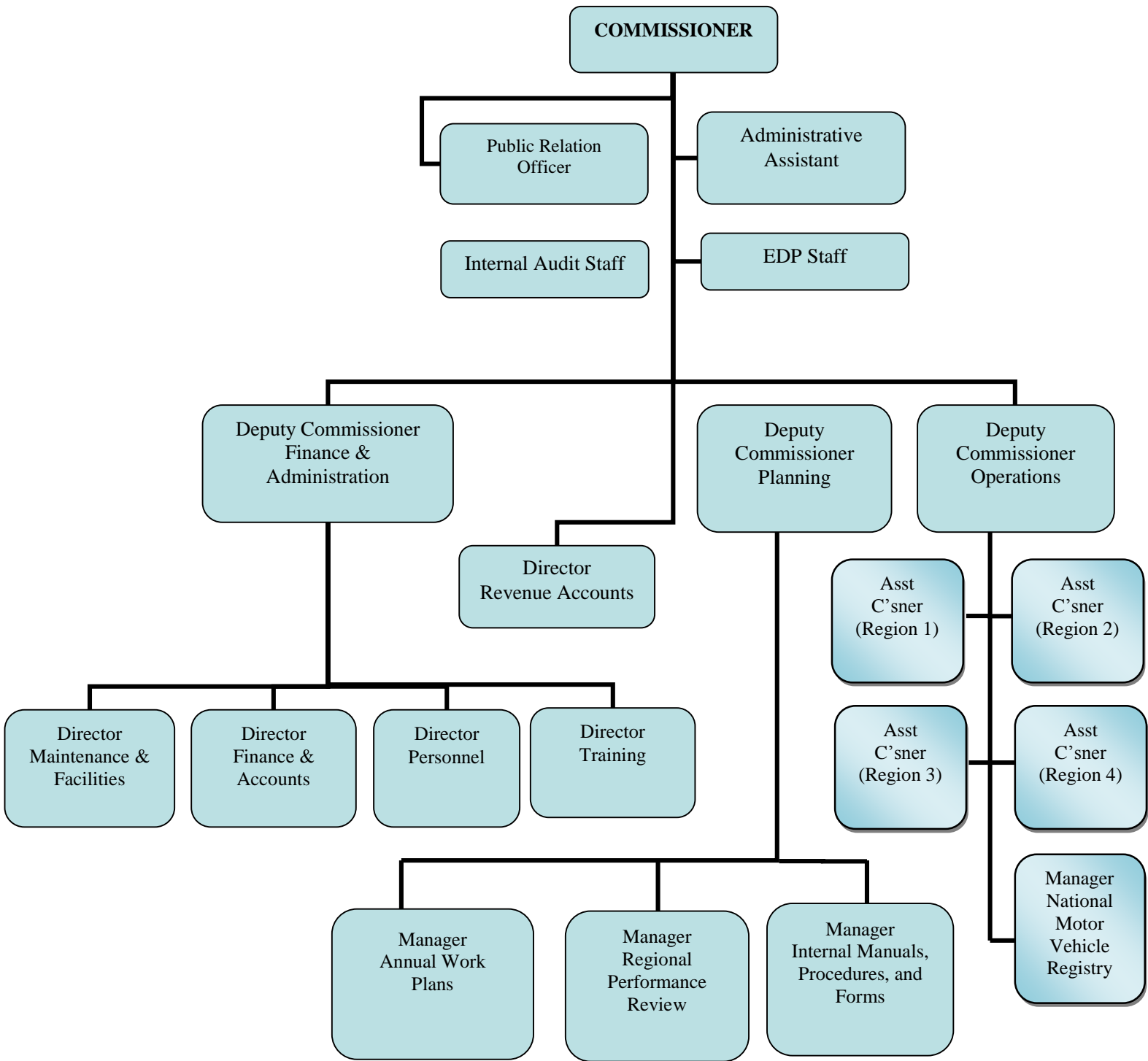
MAP OF JAMAICA



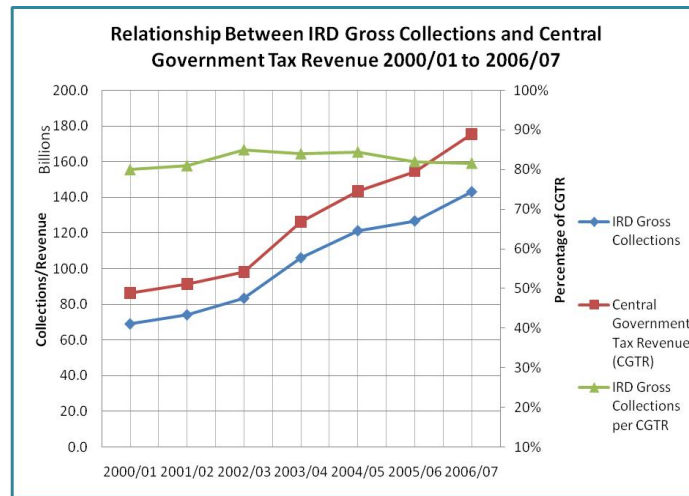
## STRUCTURE OF THE GOVERNMENT OF JAMAICA



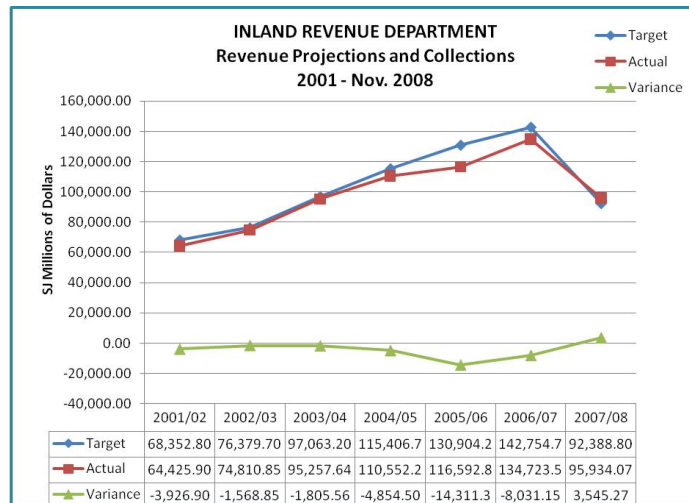
JAMAICA INLAND REVENUE DEPARTMENT – Organisational Chart



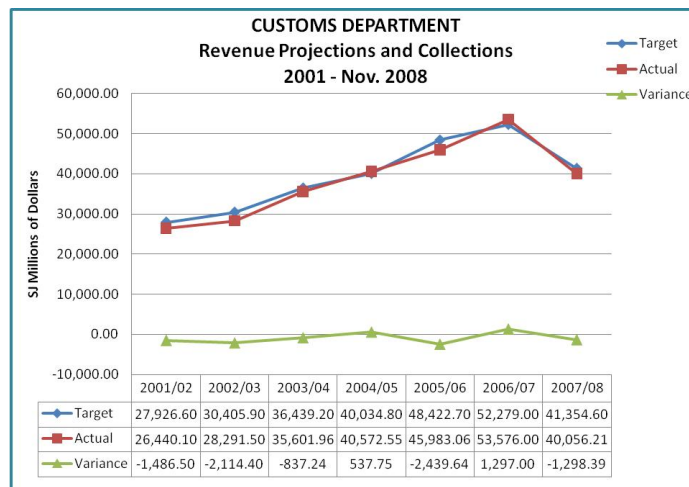
## APPENDIX IV



(a) Relationship between IRD Gross Collections and Central Government Tax Revenue (CGTR), 2000/01 - 2006/07



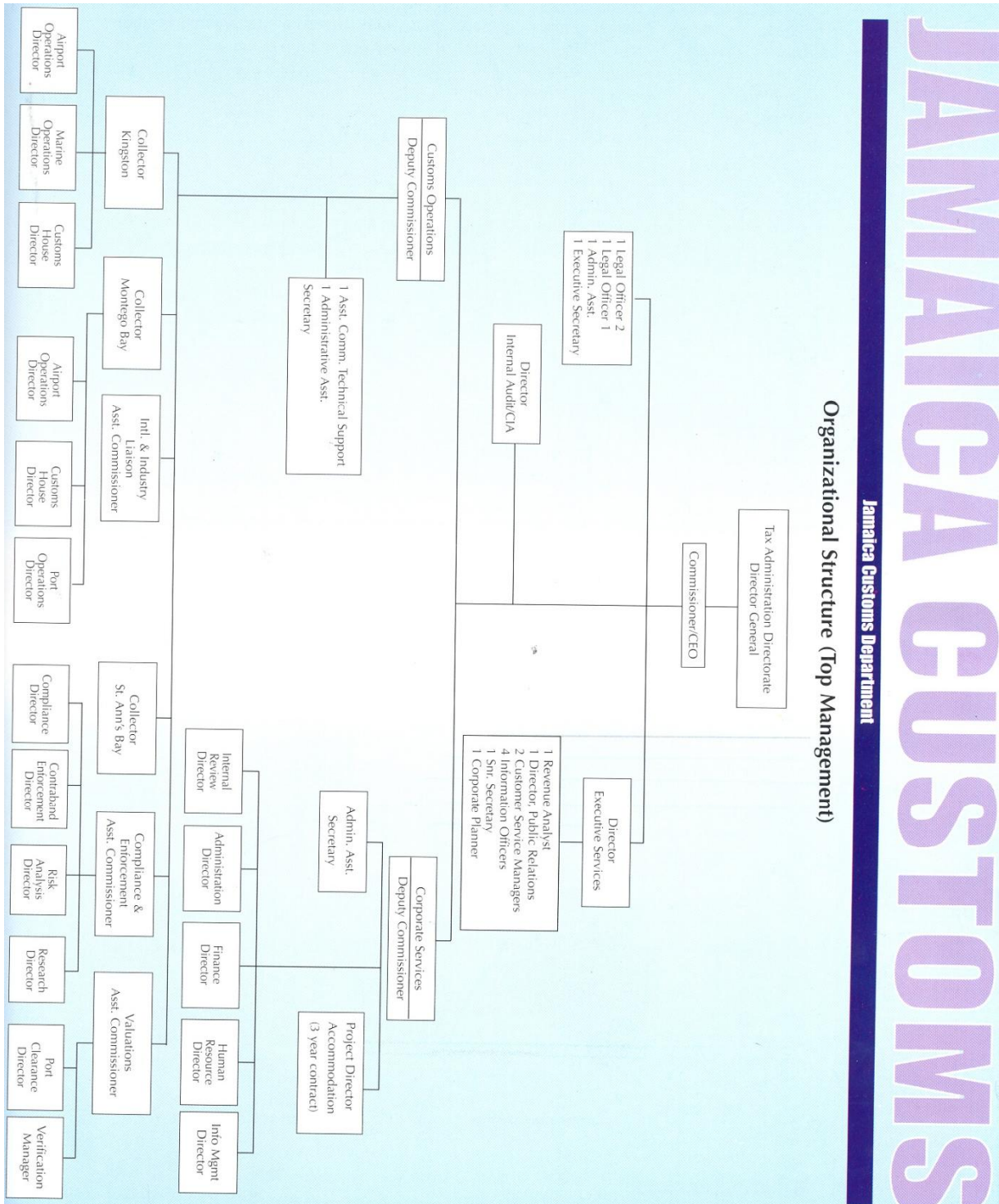
(b) IRD: Revenue Projections and Collections  
2001 - Nov. 2008



(c) Customs Department: Revenue Projections and Collections  
2001 - Nov. 2008

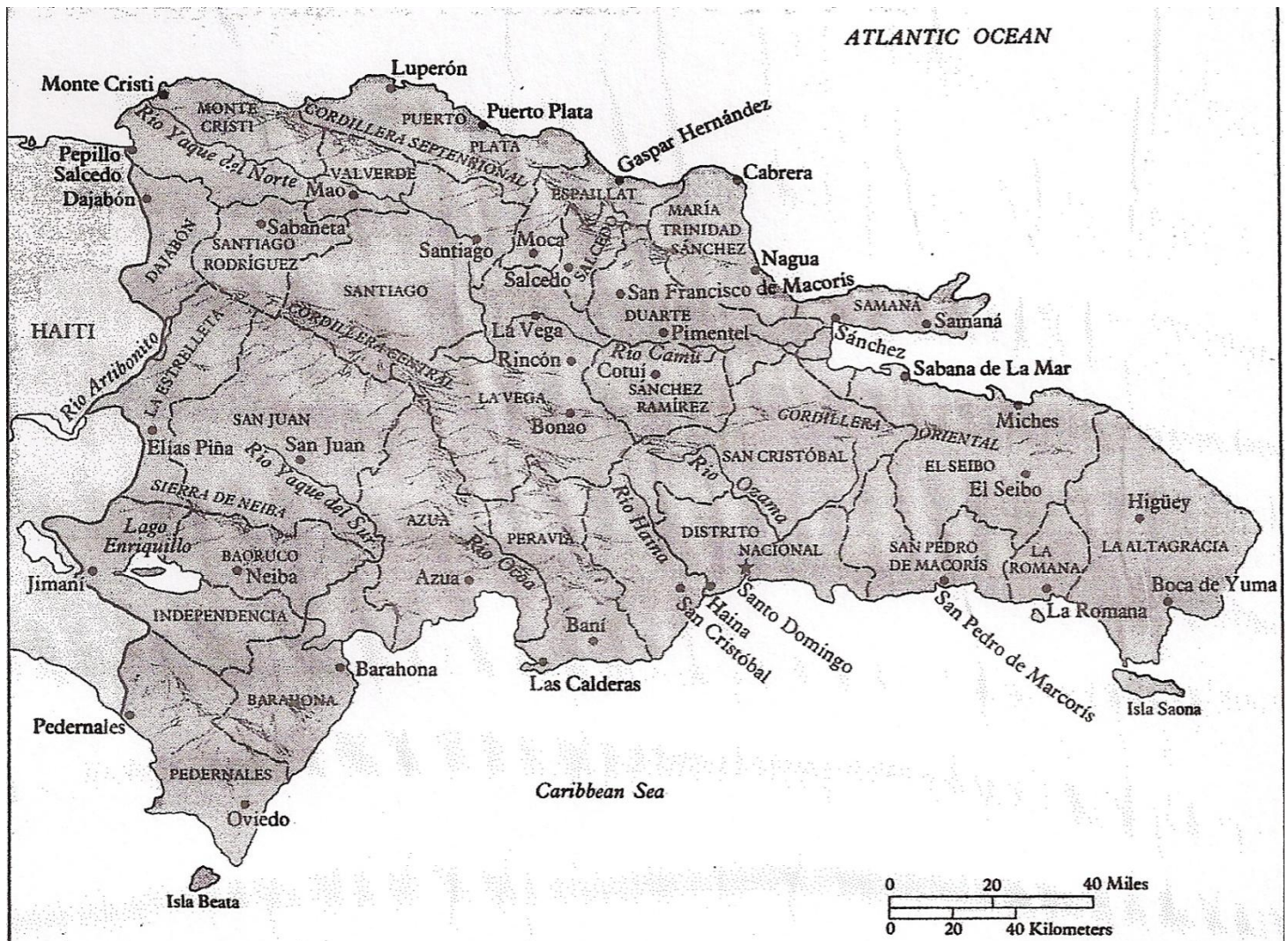


JAMAICA CUSTOMS DEPARTMENT – Organisational Chart

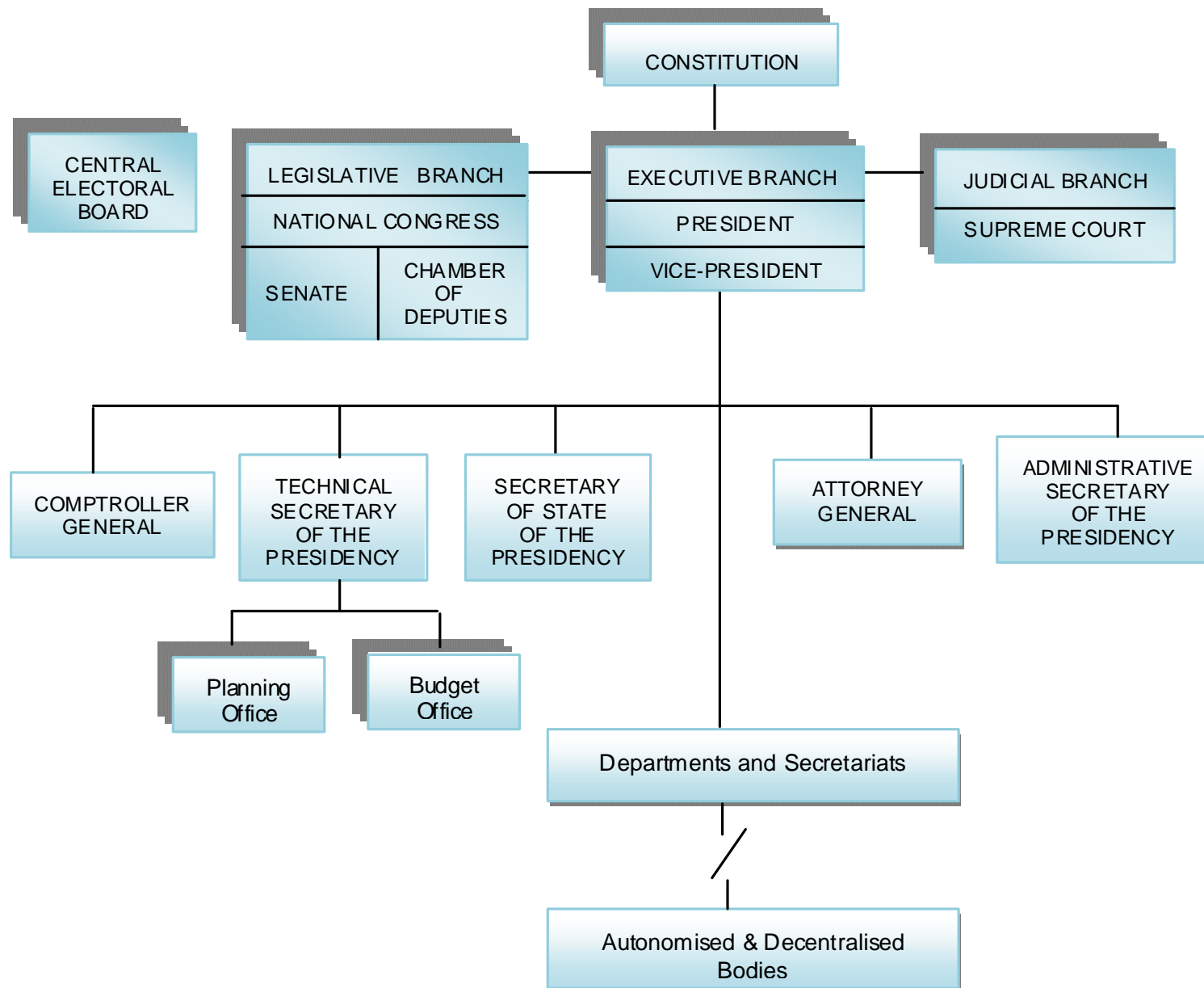


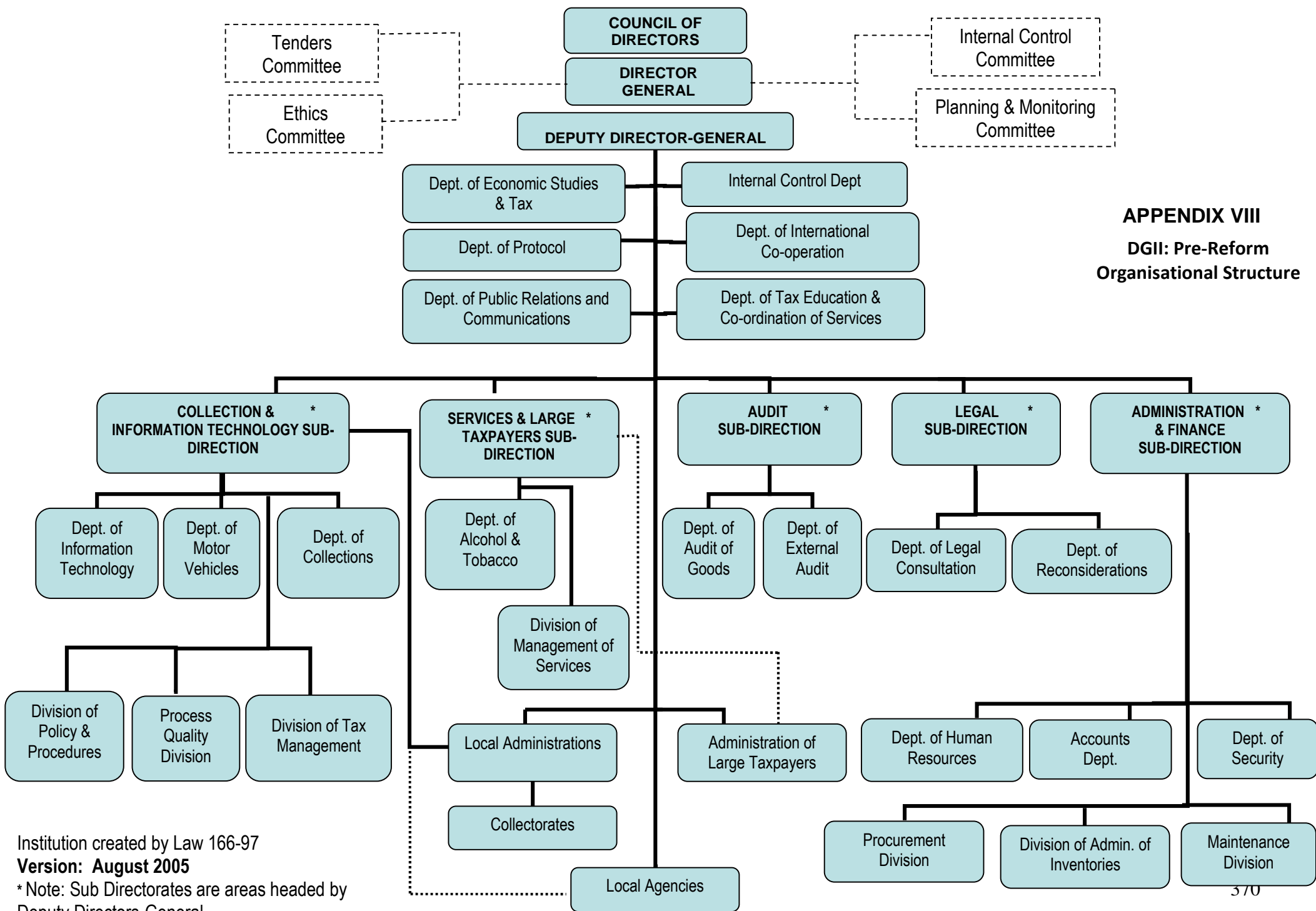


## MAP OF THE DOMINICAN REPUBLIC

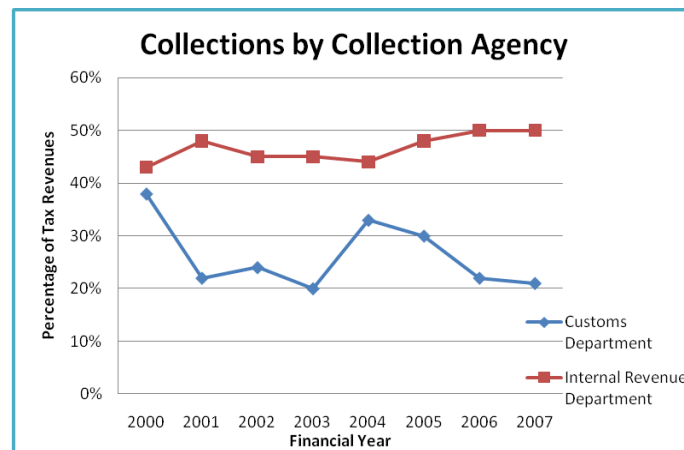


## STRUCTURE OF THE GOVERNMENT OF THE DOMINICAN REPUBLIC

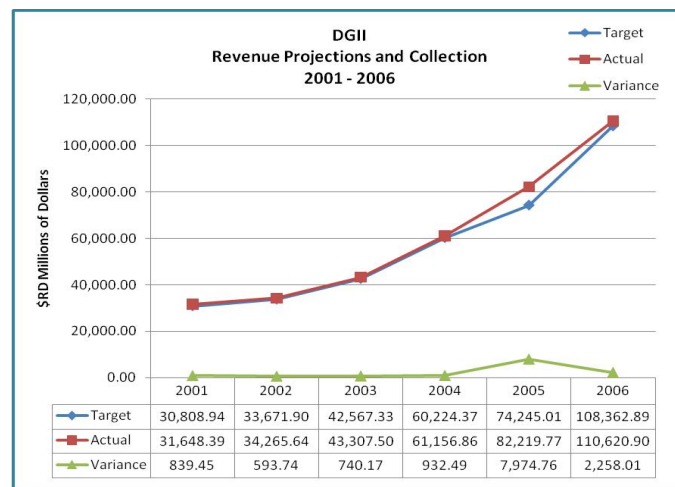




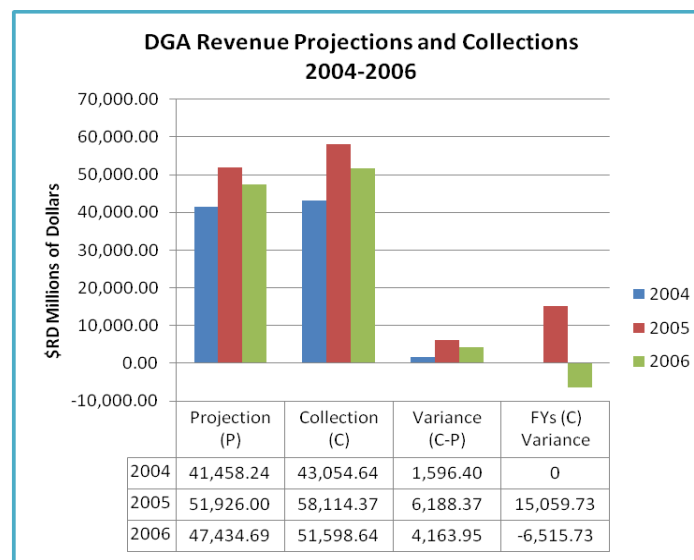
## APPENDIX IX



(a) Main Revenue Collecting Agencies - Collections as a Percentage of Total Tax Revenue

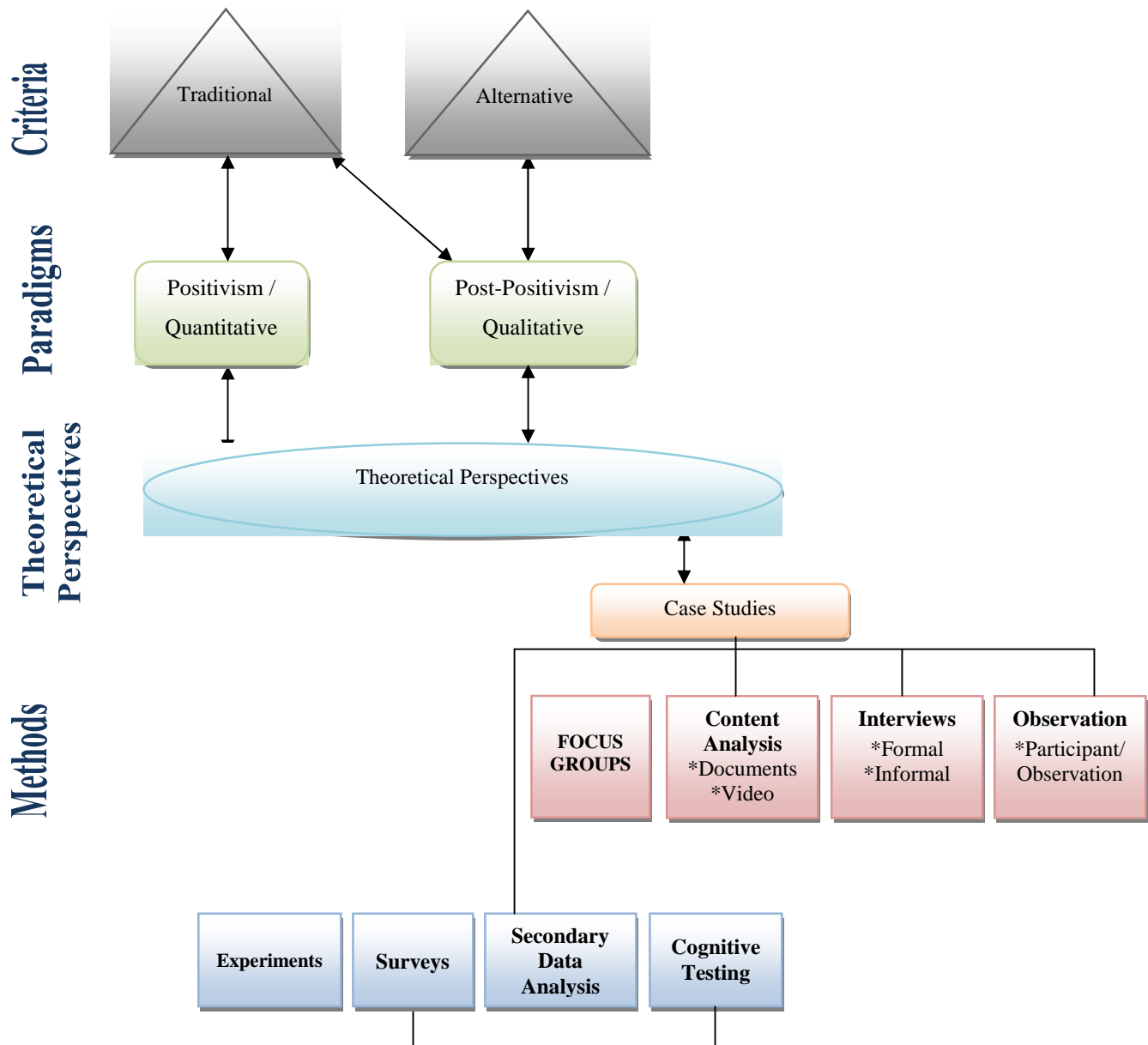


(b) DGII - Revenue Projections and Collection 2001-2006.



(c) Revenue Projections and Collections 2004-2006

## The Relationship Between Methods, Theoretical Perspectives, Paradigms and Criteria



Source: Devers, 1999: pp. 1164

### MEASURING THE ORGANISATION'S LEVEL OF AUTONOMY OR INDEPENDENCE

This questionnaire uses different dimensions to arrive at a measure of organisational autonomy. For each of the dimensions in the following table, select the situation which best describes the organisation's previous method of operation as well as what now obtains.

#### Guidelines for completing this Section:

- (1) Section A: 'Managerial Autonomy' refers to the organisation's ability to make decisions regarding the choice and use of inputs and resources. It encompasses both human resources management and financial management.
- (2) Section B: 'Policy Autonomy' does not refer to the design and development of tax policy or changes to tax policy itself. It is restricted to the sub-processes and procedures chosen to effect externally prescribed outcomes, the choice of policy instruments to implement externally set policy, the quantity and quality of services produced - i.e how policy will be implemented.

Degree of Autonomy/Independence	Measure/Indicator	For each Section, tick <u>one</u> box only in each of the two columns	
	<b>A. Legal Autonomy:</b>	Before	Now
<b>Minimum Level of Autonomy/Independence</b>	i) The organisation is a part of central government without its own status.	<input type="checkbox"/>	<input type="checkbox"/>
<b>Low Level of Autonomy/Independence</b>	ii) The organisation has a separate status within central government (e.g based on a Delegation Act) but has no own legal personality different from that of central government.	<input type="checkbox"/>	<input type="checkbox"/>
<b>High Level of Autonomy/Independence</b>	iii) The organisation has a legal personality under public law and is created by a parliamentary act.	<input type="checkbox"/>	<input type="checkbox"/>
<b>Maximum level of Autonomy/Independence</b>	iv) The organisation has a legal personality under private law.	<input type="checkbox"/>	<input type="checkbox"/>

<b>Degree of Autonomy/Independence</b>	<b>Measure/Indicator</b>	<b>For each Section, tick <u>one</u> box only in each of the two columns</b>	
	<b>B. Structural Autonomy:</b>	Before	Now
<b>Minimum Level of Autonomy/Independence</b>	i) The head of the organisation is appointed and evaluated by central government. He/she is directly accountable to central government. There is no advisory or supervisory body involved.	<input type="checkbox"/>	<input type="checkbox"/>
<b>Low Level of Autonomy/Independence</b>	ii) The head of the organisation is appointed by central government. He/she is accountable to central government and to a supervisory board in which the majority of the members is representing central government. The representatives of government on the supervisory board could be resigned at any time.	<input type="checkbox"/>	<input type="checkbox"/>
<b>High Level of Autonomy/Independence</b>	iii) The head of the organisation is appointed and evaluated by the supervisory board in which the representatives of government have a majority vote. These representatives could be resigned by government at any time.	<input type="checkbox"/>	<input type="checkbox"/>
<b>Maximum level of Autonomy/Independence</b>	iv) The head of the organisation is appointed by the supervisory board in which the representatives of third parties have a majority vote.	<input type="checkbox"/>	<input type="checkbox"/>
	<b>C. Financial Autonomy:</b>		
<b>Minimum Level of Autonomy/Independence</b>	i) The organisation is fully funded by central government, does not have to cover deficits itself and has no ability to extend its funding by e.g charge of user fees or loans on the capital market.	<input type="checkbox"/>	<input type="checkbox"/>
<b>Low Level of Autonomy/Independence</b>	ii) The organisation is financed primarily through central government, but a minor part of funding stems from budget allocation of, for example, user fees or loans. The organisation has to cover only a minor extent of deficits itself.	<input type="checkbox"/>	<input type="checkbox"/>
<b>High Level of Autonomy/Independence</b>	iii) The organisation is financed primarily through income from sources other than central government (e.g tariffs, user fees, profits), but a minor part of funding stems from central government. The organisation has to cover a major extent of deficits itself.	<input type="checkbox"/>	<input type="checkbox"/>
<b>Maximum level of Autonomy/Independence</b>	iv) The organisation is financed exclusively through income from sources other than central government (e.g tariffs, user fees, profits). The organisation has to cover all deficits itself.	<input type="checkbox"/>	<input type="checkbox"/>



<b>Degree of Autonomy/Independence</b>	<b>Measure/Indicator</b>	<b>For each Section, tick <u>one</u> box only in each of the two columns</b>	
	<b>D. Policy Autonomy (sub-processes, procedures, choice of policy instruments):</b>	Before	Now
<b>Minimum Level of Autonomy/Independence</b>	i) The decision concerning the structure and content of the primary production process, policy instruments and outputs, objectives and effects are taken by central government without prior advice of the organisation. The organisation may not decide on individual applications of general rules and has no authorisation to set general rules.	<input type="checkbox"/>	<input type="checkbox"/>
<b>Low Level of Autonomy/Independence</b>	ii) The organisation may take decisions concerning the structure and content of the production processes within the lines of the policy instruments, output norms, objectives and effect norms set by central government.	<input type="checkbox"/>	<input type="checkbox"/>
<b>High Level of Autonomy/Independence</b>	iii) The organisation may decide upon which policy instruments to use and outputs norms within the objectives and effects norms set by government. The head of the organisation may decide him/herself on individual applications of general regulations.	<input type="checkbox"/>	<input type="checkbox"/>
<b>Maximum level of Autonomy/Independence</b>	iv) The organisation may itself decide upon all aspects of policy like objectives, policy instruments to use and processes. The organisation is authorised to issue general regulations.	<input type="checkbox"/>	<input type="checkbox"/>
<b>Degree of Autonomy/Independence</b>	<b>E. Managerial Autonomy (financial management and human resources management):</b>		
<b>Minimum Level of Autonomy/Independence</b>	i) The decisions concerning managerial actions are taken externally by central government without prior consultation with the organisation.	<input type="checkbox"/>	<input type="checkbox"/>
<b>Low Level of Autonomy/Independence</b>	ii) The organisation may take managerial decisions (e.g concerning financial transactions) within strict procedures set by central government.	<input type="checkbox"/>	<input type="checkbox"/>
<b>High Level of Autonomy/Independence</b>	iii) The organisation may itself set the procedures concerning the use of inputs within general principles set by central government.	<input type="checkbox"/>	<input type="checkbox"/>
<b>Maximum level of Autonomy/Independence</b>	iv) The organisation may itself decide upon all aspects of management, like the general principle, the procedures and the transactions.	<input type="checkbox"/>	<input type="checkbox"/>



<b>Degree of Autonomy/Independence</b>	<b>Measure/Indicator</b>	<b>For each Section, tick <u>one</u> box only in each of the two columns</b>
	<b>F. Interventional Autonomy:</b>	Before      Now
<b>Minimum Level of Autonomy/Independence</b>	i) The operations of the organisation are supervised directly by the central government against strict norms. Deviations may or may not result in severe sanctions and immediate intervention by the central government.	<input type="checkbox"/> <input type="checkbox"/>
<b>Low Level of Autonomy/Independence</b>	ii) The organisation has rather extensive reporting requirements on a quite detailed level against explicit norms. Deviations may or may not result in substantial sanctions and possible intervention by central government.	<input type="checkbox"/> <input type="checkbox"/>
<b>High Level of Autonomy/Independence</b>	iii) The organisation has only limited reporting requirements on a general level to central government and is only ad hoc subjected to evaluation or audits commissioned by central government. The norms as basis for evaluation and auditing are neither explicit nor strict. Sanctions and interventions are only possible after consultation of the organisation and there is only a limited threat of sanctions or intervention by central government. Sanctions are rather soft.	<input type="checkbox"/> <input type="checkbox"/>
<b>Maximum level of Autonomy/Independence</b>	iv) The organisation has no reporting requirements to central government and is not subjected to evaluation or audits commissioned by central government. There is no threat of sanctions or intervention by central government.	<input type="checkbox"/> <input type="checkbox"/>

## **SECTION 2: MORE INDEPTH DATA GATHERING ON LEVEL OF AUTONOMY**

This section seeks to gain more indepth information against one (1) of the dimensions of autonomy measured above (interventional autonomy). The information will assist in measuring reporting and accountability controls.

### **INTERVENTIONAL AUTONOMY**

1. ***What are the formal obligations of the organisation vis-à-vis central government, (i.e what type of formal documentation is the organisation required to submit, e.g Annual Reports, Half-yearly Reports, Appropriation Accounts, Revenue Accounts, Arrears of Revenue, Reports on Revenue Loss etc.)?***

***Document Type***

***Frequency of Submission***

- i.
- ii.
- iii.
- iv.
- v.
- vi.

2. ***Was/Will the performance of the organisation (be) subjected to ex-post audit?***

- i. Yes
- ii. No

Before

Now

☐  
☐☐  
☐

3. ***By whom is the organisation audited?***

Name(s) of Agency/Agencies: \_\_\_\_\_

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4. ***On what criteria was performance evaluated?***

List of Criteria: \_\_\_\_\_

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5. ***On what criteria will the performance of the new semi-autonomous entity be evaluated?***

List of Criteria: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

***THANK YOU FOR YOUR ASSISTANCE.***

## INFLUENCES ON AUTONOMY: MASTER INTERVIEW TOPIC GUIDE

### DEMOGRAPHIC DATA

#### A. ABOUT THE INTERVIEWEE

1. Name .....
2. Position.....
3. Length of Time in your Current Position.....
4. Length of Time as a member of the Organisation .....

### RATIONALE BEHIND THE REFORM OF TAX ADMINISTRATION

#### B. RATIONALE FOR THE GRANTING OF AUTONOMY

- (1). What was/were the main reason(s) for the reform of tax administration?

Probes:

- The need for a catalyst to launch broader revenue administration reform (e.g modernised operations, improved automation, integrated and function-based structures);
- Low effectiveness of tax administration and poor levels of compliance;
- Impediments caused by central civil service rules and regulation (financing, recruitment, promotion, discipline, training);
- Poor communication and data interchange among existing revenue departments (e.g income tax, customs, value added tax);
- High levels of corruption;
- The desire to create within the public service an 'island of excellence' which could later serve as a benchmark for others undertaking reform;
- Other reason(s).

- (2) Was there any formal assessment of costs and benefits, e.g. to determine if reforms could more efficiently be undertaken within current existing arrangements?

### ADDITIONAL MEASURE OF AUTONOMY

#### C. LEGAL AUTONOMY

- (1) How is the organisation constituted within the overall organisational structure of government?

Probes:

- As a department under the Ministry of Finance;
- As a semi-autonomous body.

- (2) Does the organisation have its own separate legal character? Is it able to own assets and create liabilities to be used, for example, for the improvement of its capital and infrastructure needs?

#### D. GOVERNANCE FRAMEWORK (INCLUDING INFORMALITIES)

##### Steering Arrangements

- (1) What is the role of the head of the organisation vis-à-vis the Minister of Finance as well as vis-à-vis the Financial Secretary/Permanent Secretary?

### **Reporting Relationships and Accountability Mechanisms**

- (2) How does the organisation report to Government? Please describe any specific measures, in law as well as in practice (captures formal as well as informal operations).
- (3) What informal rules are applied? (e.g. requests for information; means of access within the department).
- (4) What mechanisms exist for reporting (a) to Government and (b) to Parliament?
- (5) Is the boundary currently surrounding the organisation clearly demarcated?
- (6) Are the goals, functions and responsibilities of the organisation agreed and clearly specified?
- (7) What accountability arrangements exist to ensure high standards of performance and to safeguard against abuse of authority?
- (8) Please describe the specific arrangements for external and internal audit, in law as well as in practice (captures formal as well as informal operations).
- (9) Are accountability mechanisms appropriate for the effective monitoring and oversight of the organisation? If no, please elaborate.

### **Performance Management Systems**

- (10) Does the organisation currently have a set of specific, measurable performance indicators against which it is assessed? Please elaborate
- (11) In your view, what is/are the most important measure(s) of performance?
- (12) Who sets revenue targets? Ministry of Finance alone? Ministry and the organisation in consensus agreement? Other external entity (e.g. donor agency?)
- (13) How are other performance indicators developed?
- (14) Do performance objectives emphasise inputs, outputs, or outcomes?
- (15) Who monitors and evaluates the performance of the organisation?
- (16) Who makes the most use of performance data within the organisation? To what extent and for what reasons are performance data used?
- (17) Who (if anyone) makes the most use of performance data outside of the organisation? To what extent and for what reasons are performance data used?

## **INTERNAL ORGANISATIONAL ENVIRONMENT**

### **E. INTERNAL STRUCTURES AND SYSTEMS**

#### **Structures**

- (1) In your view, is the structure of the organisation appropriate to support the achievement of its goals and objectives? If no, please elaborate.
- (2) Is there an Internal Audit Unit with the organisation? What is the nature of its function?
- (3) What is the type and efficacy of controls to safeguard integrity within the organisation?

#### **Systems**

- (4) Is there a Corporate/Strategic Plan within the organisation?
- (5) Is the Corporate/Strategic Plan linked to Operational Work Plans?
- (6) Is use being made of any manual or computerised planning/monitoring/information systems to aid in decision making, evaluation and control?  
Probes:  
E.g: Use of performance management, human resource management, or financial management systems.
- (7) If IT systems are being used:
  - ☐ What is the extent of computerisation? Are systems appropriate for your requirements?
  - ☐ Are they up to date?
  - ☐ Do management and staff make optimal use of IT systems?
- (8) What is the extent of system integration? Is there interconnectivity between HQ and site offices?
- (9) How efficient are internal information flows? Is there effective downward, upward and lateral communication throughout the organisation?

## **F. THE NATURE AND EXTENT OF RESOURCE DEPENDENCY**

- (1) What is the origin of the organisation's budget? (Discretionary from government's annual budget, or fixed percentage of collections?)
- (2) Can financial resources be obtained from other sources?  
Probes:
  - ☐ Is the organisation permitted to retain for its own use any portion of the revenue yield, e.g. a proportion of collections exceeding the stipulated revenue target?
  - ☐ Is the TA allowed to levy and retain user fees on any of its services?
- (3) Has the availability, adequacy and continuity of funding affected the functioning of the organisation? If so, how?

## **G. CONTROL OVER HUMAN RESOURCE ACQUISITION AND RESOURCE ALLOCATION**

- (1) Are staffing levels adequate for the organisation to achieve its aims and objectives?
- (2) How easy is it for the organisation to create new staffing positions?
- (3) How easy is it for the organisation to recruit new staff?
- (4) How easy is it for the organisation to remove poor (non) performers or corrupt members of staff?
- (5) Does the organisation have the authority to transfer staff to other tasks and geographical locations?
- (6) Does the organisation have the authority to alter the skill mix as appropriate in order to deal with internal contingencies?

## **TECHNICAL/TASK NETWORK ENVIRONMENT**

## **H. PERCEPTIONS ABOUT THE ATTITUDES/BEHAVIOURS AND CAPACITY OF THE CENTRE**

- (1) How would you describe the behaviours/attitudes displayed by bureaucrats within central government departments during their conduct of business with senior tax and customs officials?
- (2) Would you say that the other Ministries and departments with whom you interact provide you with a facilitative and supportive type of environment?
- (3) Do you think that central government departments have the capacity needed to fulfil their role?  
Explain.  
Probes:
  - Capacity of the MoF for public expenditure management
  - Capacity of the MoF for central co-ordination, resource allocation, logistical support etc.
  - Capacity of the Treasury for managing expenditure
- (4) Do you think that bureaucrats within central government ministries and departments place too much emphasis (time and resources) on the monitoring and control of organisational activities?
- (5) To what extent is the formal institutional framework pertaining to the functioning of the organisation adhered to by management and staff of the central organisations?  
Probes
  - Practice of bypassing formal hierarchical channels?

## **I. ACTUAL MANIFESTATIONS OF POWER/DEPENDENCE RELATIONS**

- (1) Would you say that actors within central government ministries and departments use their powers to influence or constrain the behaviour/actions of officials with the organisation?
- (2) Can you cite a few instances in which use was made of power positions to ensure compliance with specific requests?

## **INSTITUTIONAL ENVIRONMENT**

## **J. INTEREST GROUP PARTICIPATION**

- (1) What institutional arrangements exist within the organisation for stakeholders to voice their concerns on issues or decisions by which they affected?
- (2) What sorts of pressures are brought to bear upon the organisation?
- (3) How successful are these attempts to influence the functioning of the organisation?

- (4) Do employees of the organisation belong to one or more unions?
- (5) How strong are these employee representatives?
- (6) Do they share the mission, vision, and objectives of the organisation as defined by management?
- (7) What is the general attitude of the unions towards measures to improve the effectiveness, efficiency and integrity of the organisation? How much resistance is exerted towards organisational change initiatives and efforts aimed towards improvements?
- (8) Of which international organisations is the department a member?
- (9) By which regional/international agreements are the organisation bound due to its membership in the regional/international body?
- (10) In what ways do the various agreements hinder the organisation from functioning autonomously at the local national level?
- (11) Have any of the organisation's reform programmes been financed by international donor agencies?
- (12) What is their role in the reform implementation process? Do they seek to control the process or do they play a more advisory and facilitative role?
- (13) What is the response of the organisation to attempts by donor agencies to influence the context and method of implementation of reforms?

#### **K. LEGAL/ADMINISTRATIVE FRAMEWORK**

- (1) Are the enforcement powers granted to the organisation under the tax laws and regulations adequate to allow effective enforcement?
- (2) What types of powers are granted under tax and customs laws to impose sanctions and penalties? Is the application of such laws automatic or discretionary?
- (3) What is the nature and extent of their application (e.g number of temporary closures per month; number of seizures etc.).
- (4) What general laws affect revenue administration?  
Probes:
  - Bank Secrecy Laws
  - Company Law
  - Partnership Law
  - Criminal and Civil Procedure Codes
  - Law of Evidence
  - Bankruptcy Law
  - Other
- (5) Do any of the general laws create problems for effective revenue administration? If so, how?
- (6) In your view, are the formal administrative laws, rules and instructions conducive to the effective functioning of the organisation? Please elaborate.

#### **L. POLITICAL INTERVENTION**

- (1) Do politicians show any interest at all in operational and management decisions? Do they in any way seek to influence decisions relating to specific cases?
- (2) In which operational areas do Ministers/policy makers show most interest?
- (3) Is the management of the organisation able to resist such attempts at external control?
- (4) How have such issues been dealt with in the past?
- (5) Has the level of external involvement in any way changed over the period of time?
- (6) With respect to external involvement, how would you compare your situation with other government organisations?

#### **M. THE JUDICIARY**

- (1) How supportive is the judiciary of the tax and customs administrations?
- (2) To what extent are judges skilled and knowledgeable in tax and customs policy and operations?
- (3) In what way does their expertise/lack of expertise in these areas impact on administrative decision making, in particular with regard the exercise of autonomy by tax officials?

- (4) How would you comment on the view that the courts sometimes tend to interfere in the operational functioning of the revenue administrations? If you agree, please identify some of the ways.

Probes:

- Court judgements against administrative choices
- Enforcement of compliance with administrative procedures established in the legislation

#### **N. GENERAL VIEWS**

- (1) In your view, what are three of the main issues which need to be urgently addressed in order for the organisation to function autonomously?
- (2) Is anything currently being done to address these issues?
- (3) Are there any issues which I have not raised which you think may be important?

**Thank you for your time and co-operation.**

**Note: Questions will be asked of interviewees with regard to the pre- and post- reform status of the organisation.**



**INFLUENCES ON AUTONOMY: LEGAL TRADITION TOPIC GUIDE**

**A. SOURCE OF LAW**

1. What is the primary source of law in .....(country) ? Are there any secondary sources of law?
2. Over the years, has there been any break with the traditional source of law? If so, how and why?

**B. STYLES OF LEGISLATIVE DRAFTING**

1. How would you describe the traditional method of drafting legislation in..... (country)?

Probes:

- Laws are written at high levels of abstraction, use of broad general statements of principle, tax and customs functionaries left to fill in the details.
- Laws are very detailed and specific, attempts to cover every humanly conceived possibility.

2. How would you describe the traditional method of drafting **taxing legislation** in .... (country)?
3. What factors influence the way in which **taxing legislation** is drafted?

Probes:

- Legislative attitude towards administrative decision-making?
- The nature of the activity being regulated?
- The type of society/individuals being regulated? (compliant vs. non-compliant nature of the society).

4. Has there been any change, over the years, in the way in which **taxing legislation** is drafted? If so, please explain.
5. In your view, does the way in which **tax laws** are drafted impact on the ability of tax officials in ..... (country) to properly exercise administrative discretion? If so, how?

**C. STATUTORY INTERPRETATION**

1. In this country's ..... (civil/common law) tradition, how are laws generally interpreted?

Probes:

- Use of the literal approach to interpretation; and/or
- Use of the purposive approach to interpretation

2. To what extent has there been, over the years, any change in the way in which laws in general are interpreted? What was/were the reason(s) behind such change(s)?
3. Focusing specifically on **taxing legislation**, how would you describe the way in which such legislation is traditionally interpreted in ..... (country)?
4. To what extent has there been, over the years, any change in the way in which **taxing legislation** is interpreted? What was/were the reason(s) behind such change(s)?

**DOCUMENTATION FOR DESK ANALYSIS**

The following documentation is being requested to assist in the conduct of the study:

**DOMESTIC AND CUSTOMS TAX ADMINISTRATION**

1. Organisation of the tax and customs administration

- a. Provide a copy of your organisational chart and a description of the organisational structure, as well as any other information which may be of assistance ( e.g Strategic Plan, Annual Reports, Newsletters, Employee Attitude Surveys, Customer Satisfaction Surveys, etc).
- b. Provide information on Staff Establishment by functional area as well as real allocation of staffing.
- c. Provide information on your operational budgets for the past three (3) years as well as detailed information on the allocation of funds for each (sub)program or budget head.
- d. Provide information on salary scales, other benefits paid to staff, as well as any data on salary surveys conducted.
- e. Description of facilities (buildings, office equipment etc.).

2. Human Resource Management/Human Resource Development

- a. A copy of the organisation's HR Strategy.
- b. A copy of the organisation Training Strategy.
- c. Description of formal level of training of staff in key functional areas.
- d. Strategy for identifying training needs, for providing training to meet such needs, for evaluating training, and for managing knowledge within the organisation.
- e. Strategy for succession planning within the organisation.

3. Information Technology

- a. A copy of the organisation's IT strategy.
- b. Description of existing computer facilities. Software used. Hardware available. CPUs (models and numbers, main memory and disk capacity in megabytes. Printers. Number of desktops, laptops and terminals in use
- c. Indicate if electronic filing or other web-based systems are available for taxpayers.



**Comptroller General of the Dominican Republic**

**Circular No.: 0000027**

**Date: 5<sup>th</sup> December 2006**

**ALL STATE SECRETARIATS, GENERAL DIRECTORATES, CENTRAL  
GOVERNMENT INSTITUTIONS AND DECENTRALISED AND AUTONOMOUS  
PUBLIC SECTOR BODIES**

**SUBJECT: PAYROLL REDUCTIONS**

Politely, in attention to the statement by His Excellency the President of the Republic, in a decree pronounced on the 4th of December of this year, indicating that from January 2007, all payrolls **MUST** be reduced as follows:

- 10% of monthly salary for those earnings above RD\$125,000.00
- 5% for those earning more than RD\$100,000.00 and up to RD\$125,000.00
- 3% for those earning more than RD\$50,000.00 and up to RD\$100,000.00

For central government institutions, reductions will be an indispensable condition for authorisation of monthly payroll warrants by the Comptroller General.

Decentralised and autonomous bodies will be required to send a copy of the payroll payable in the month of December 2006, and a copy of the payroll payable in the month of January 2007 to the Comptroller General. This will enable a check to be made on the implementation of the Presidential decree.

Reductions should apply equally to staff recruited within the public administration.

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